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# MONTANA LEGISLATIVE HISTORY

Chapter 10 19 93

Bill H _____ S 1 Original bill & history ✓C

| H. Committee on Judiciary | | S. Committee on Judiciary | |
|---|---|---|---|
| Hearing Date(s) Jan 14 | ___C | Hearing Date(s) Jan 05 | ___C |
| Jan 15 | ✓C | _____ | ___C |
| _____ | ___C | _____ | ___C |
| _____ | ___C | _____ | ___C |
| Date Out Jan 15 | ✓C | Jan 05 | ✓C |

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

SENATE BILL NO. 1

INTRODUCED BY LYNCH
BY REQUEST OF THE CODE COMMISSIONER

IN THE SENATE

| | |
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| DECEMBER 22, 1992 | INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY. |
| JANUARY 4, 1993 | FIRST READING. |
| JANUARY 5, 1993 | COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED. |
| | PRINTING REPORT. |
| JANUARY 6, 1993 | SECOND READING, DO PASS. |
| JANUARY 7, 1993 | ENGROSSING REPORT. |
| | THIRD READING, PASSED. AYES, 50; NOES, 0. |
| | TRANSMITTED TO HOUSE. |

IN THE HOUSE

| | |
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| JANUARY 9, 1993 | INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY. |
| | FIRST READING. |
| JANUARY 19, 1993 | COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED. |
| JANUARY 20, 1993 | SECOND READING, CONCURRED IN. |
| JANUARY 21, 1993 | THIRD READING, CONCURRED IN. AYES, 92; NOES, 3. |
| | RETURNED TO SENATE. |

IN THE HOUSE

| | |
|---|---|
| JANUARY 22, 1992 | RECEIVED FROM HOUSE. |
| | SENT TO ENROLLING. |
| | REPORTED CORRECTLY ENROLLED. |

CODE COMMISSIONER REPORT
1992
1993 CODE COMMISSIONER BILL SUMMARY

The Code Commissioner bill summary does not reflect changes made to make language gender neutral or to conform existing language to current style.

Section 1. 2-1-212. Revises name of Veterans Administration center to reflect federal law.

Section 2. 2-89-202. Deletes references to Montana Statehood Centennial Office to reflect the termination of the office.

Section 3. 2-89-301. Deletes (2) concerning role of Montana Statehood Centennial Office in designing centennial license plates.

Section 4. 2-89-302. Deletes references to Montana Statehood Centennial Office and deletes provision concerning funding for the office.

Section 5. 3-1-501. In (1)(l), in two places, substitutes "lower tribunal" for "inferior tribunal". This change was suggested by the Commission on Courts of Limited Jurisdiction.

Section 6. 3-2-704. Deletes reference concerning authority of Supreme Court to adopt local rules because the reference is meaningless due to the last phrase.

Section 7. 3-5-602. In two places substitutes "supreme court administrator" for "department of commerce" to reflect the transfer of duties provided for in Chapter 704, Laws of 1991.

Section 8. 3-12-106. Increases District Court small claims court jurisdiction from $2,500 to $3,000 to conform to the change made by Chapter 307, Laws of 1991.

Section 9. 5-17-202. In (1)(b) substitutes "commission" for "committee" to conform the text to the defined term.

Section 10. 7-4-2503. In (3)(c) substitutes "the percentage change in the previous calendar year's consumer price index" for "an increment of 100% of the last previous calendar year's consumer price index" for clarity; and in (4) substitutes "most current calendar year's estimates" for "last calendar year's annual estimates" to reflect the availability of population data.

Section 11. 7-4-2504. In (1) deletes "last" before "previous calendar year's" as redundant.

Section 12. 7-6-4135. Deletes reference to the Federal Savings



Unless changes occur in this bill,
it will not be reprinted--

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and Loan Insurance Corporation, which has been merged with the Federal Deposit Insurance Corporation.

Section 13. 7-12-2175. Deletes reference to the Federal Savings and Loan Insurance Corporation, which has been merged with the Federal Deposit Insurance Corporation.

Section 14. 7-12-4207. Deletes reference to the Federal Savings and Loan Insurance Corporation, which has been merged with the Federal Deposit Insurance Corporation.

Section 15. 7-14-102. In (2) substitutes reference to 15-70-101(1)(b) for reference to 15-70-101(1)(a) to reflect renumbering of that section contained in Chapter 292, Laws of 1987.

Section 16. 7-14-2524. In (2) and (3) inserts multiplier to conform to subsection (1) and 7-14-2525.

Section 17. 10-2-412. Deletes reference to the site selected by the committee because the committee was temporary.

Section 18. 10-2-416. Substitutes "state home for veterans in eastern Montana" for "project upon completion" to reflect the repeal of the defined term.

Section 19. 10-4-212. Substitutes "this part" for "10-4-201 through 10-4-205 and 10-4-211" to reflect the enactment of 10-4-206 and 10-4-207 in 1991.

Section 20. 13-37-226. In (7) removes superfluous language.

Section 21. 15-1-201. In (1)(a) removes brackets inserted by the Code Commissioner from reference to Title 15, chapter 70, to reflect the transfer of the administration of fuel taxation from the Department of Revenue to the Department of Transportation provided for in Chapter 512, Laws of 1991.

Section 22. 15-1-202. In (1) removes brackets inserted by the Code Commissioner from reference to Title 15, chapter 70, to reflect the transfer of the administration of fuel taxation from the Department of Revenue to the Department of Transportation provided for in Chapter 512, Laws of 1991.

Section 23. 15-1-205. In (7), after "report", inserts "prepared by the department of transportation" to reflect the transfer of the administration of fuel taxes to that agency by Chapter 512, L. 1991.

Section 24. 15-24-101. In (4) increases rated capacity of light trucks from three-quarter ton to 1 ton to reflect the change made by Chapter 612, Laws of 1989.

Section 25. 15-24-102. In (2) and (3) substitutes "market value" for "assessed value"; in (3) reduces the tax rate from 16% to 9% to conform to the requirements of 15-6-138, which refers to this section; and in (4) substitutes "as provided in 15-24-103" for "as hereinafter provided" for clarity.

Section 26. 15-30-101. In (18) inserts reference to tax year to reflect usage in Title 15.

Section 27. 15-32-201. In (2) and (3) deletes erroneous subsection reference to definition of low emission wood or biomass combustion device.

Section 28. 15-36-112. In (6) and (7) removes brackets inserted by the Code Commissioner from references to the "local government severance taxes" to clarify the tax being allocated.

Section 29. 17-6-102. Deletes reference to the Federal Savings and Loan Insurance Corporation, which has been merged with the Federal Deposit Insurance Corporation.

Section 30. 17-6-104. Deletes reference to the Federal Savings and Loan Insurance Corporation, which has been merged with the Federal Deposit Insurance Corporation.

Section 31. 17-7-304. In (1) deletes reference to subsection (2), which terminates June 30, 1996.

Section 32. 19-1-102. Throughout section substitutes "secretary of health and human services" for "secretary of health, education, and welfare" to reflect changes in federal law.

Section 33. 19-1-304. Substitutes "secretary of health and human services" for "secretary of health, education, and welfare" to reflect changes in federal law.

Section 34. 19-1-401. Substitutes "secretary of health and human services" for "secretary of health, education, and welfare" to reflect changes in federal law.

Section 35. 19-1-402. Substitutes "secretary of health and human services" for "secretary of health, education, and welfare" to reflect changes in federal law.

Section 36. 19-1-503. Substitutes "secretary of health and human services" for "secretary of health, education, and welfare" to reflect changes in federal law.

Section 37. 19-1-823. Substitutes "secretary of health and human services" for "secretary of health, education, and welfare" to reflect changes in federal law.

Section 38. 19-12-202. Deletes (3), which was temporary in nature.

Section 39. 20-9-213. Deletes reference to FSLIC, which has been merged with the Federal Deposit Insurance Corporation.

Section 40. 20-10-146. In (2)(c) deletes reference to subsection (3) because the reference is superfluous.

Section 41. 23-2-716. Substitutes "department of commerce" for "department of revenue" to reflect the transfer of the assessment of tramways made by Chapter 34, L. 1991.

Section 42. 23-2-717. Throughout section substitutes "department of commerce" for "department of revenue" to reflect the transfer of the assessment of tramways made by Chapter 34, L. 1991; and in (2) substitutes "23-2-716(2)" for "23-2-715(2)" to correct an erroneous reference.

Section 43. 23-2-718. Substitutes "department of commerce" for "department of revenue" to reflect the transfer of the assessment of tramways made by Chapter 34, L. 1991.

Section 44. 25-34-102. Increases District Court small claims court jurisdiction from $2,500 to $3,000 to conform to the change made by Chapter 307, Laws of 1991.

Section 45. 25-35-502. Increases Justice's Court small claims court jurisdiction from $2,500 to $3,000 to conform to the change made by Chapter 307, Laws of 1991.

Section 46. 25-35-503. Increases Justice's Court small claims court jurisdiction from $2,500 to $3,000 to conform to the change made by Chapter 307, Laws of 1991.

Section 47. 27-1-717. In (4)(c) substitutes reference to 30-3-423 for reference to 30-3-422 to properly reflect the content of subsection (4)(c).

Section 48. 27-25-102. Substitutes "lower tribunal" for "inferior tribunal". This change was suggested by the Commission on Courts of Limited Jurisdiction.

Section 49. 27-25-203. Substitutes "lower tribunal" for "inferior tribunal". This change was suggested by the Commission on Courts of Limited Jurisdiction.

Section 50. 27-26-102. Substitutes "lower tribunal" for "inferior tribunal". This change was suggested by the Commission on Courts of Limited Jurisdiction.

Section 51. 27-26-206. Substitutes "lower tribunal" for "inferior

tribunal". This change was suggested by the Commission on Courts of Limited Jurisdiction.

Section 52. 27-27-102. Substitutes "lower tribunal" for "inferior tribunal". This change was suggested by the Commission on Courts of Limited Jurisdiction.

Section 53. 30-3-415. Substitutes "party" for "part" to correct an apparent typographical error.

Section 54. 32-2-406. Substitutes reference to the Federal Deposit Insurance Corporation for reference to the Federal Savings and Loan Insurance Corporation to reflect merger of functions.

Section 55. 33-2-827. Substitutes reference to the Federal Deposit Insurance Corporation for reference to the Federal Savings and Loan Insurance Corporation to reflect merger of functions.

Section 56. 33-11-105. Deletes reference to Title 33, chapter 8, which has terminated.

Section 57. 35-2-906. In (3)(e) substitutes reference to members for reference to shareholders to reflect that this section concerns nonprofit corporations.

Section 58. 37-17-304. Inserts "written" before "examination" to clarify that a psychologist licensed in another state is not required to take the written national examination when applying for licensure in Montana.

Section 59. 37-27-103. Deletes definition of department because the term is not used in Title 37, chapter 27.

Section 60. 37-61-202. Deletes residency requirement to reflect United States Supreme Court decisions and to conform to the Montana Supreme Court Rules for Admission to the State Bar of Montana.

Section 61. 39-51-406. In (6) deletes reference to 39-51-402 to reflect the deletion of the bond requirement from that section by Chapter 125, Laws of 1985.

Section 62. 41-5-306. In (3)(c) substitutes "short-term detention center" for "short-term detention facility" to use the term defined in 41-5-103.

Section 63. 46-11-701. Deletes (6), which was declared unconstitutional in Associated Press v. State, 250 Mont. 299, 820 P.2d 421 (1991).

Section 64. 46-18-101. Substitutes reference to the women's correctional center for reference to a women's correctional facility to conform to 53-30-101.

Section 65. 46-18-201. In (10) substitutes reference to the women's correctional center for reference to a women's correctional facility to conform to 53-30-101.

Section 66. 46-18-225. Substitutes references to the women's correctional center for reference to a women's correctional facility to conform to 53-30-101.

Section 67. 46-18-254. Inserts references to Department of Corrections and Human Services to clarify that it is the agency charged with giving notice.

Section 68. 46-23-201. In (1) substitutes reference to the women's correctional center for reference to the women's correction center to conform to 53-30-101; and in (7) deletes reference to the Montana State Prison to reflect the inclusion of the women's correctional center in the content of section.

Section 69. 53-3-308. Deletes reference to Title 53, chapter 2, part 7, repealed by Chapter 550, Laws of 1989.

Section 70. 53-19-305. Substitutes reference to 53-19-306 for reference to 53-29-306 to correct a typographical error.

Section 71. 53-20-147. Substitutes "department of health and human services" for "department of health, education, and welfare" to reflect changes in federal law.

Section 72. 53-21-147. Substitutes "department of health and human services" for "department of health, education, and welfare" to reflect changes in federal law.

Section 73. 61-1-314. Deletes (3), concerning a store license, to reflect the repeal of the store license by Chapter 658, L. 1991.

Section 74. 61-4-120. In (1)(a) deletes reference to the Montana Highway Patrol in order to conform to Chapter 724, L. 1991.

Section 75. 61-5-117. Deletes reference to hazardous materials endorsements to reflect the deletion from 61-1-135 by Chapter 563, L. 1991. Section 61-1-134 provides that a motor vehicle used to transport hazardous material is a commercial motor vehicle.

Section 76. 75-10-512. In (2)(d) inserts reference to a vehicle identification number as defined in 61-3-210 to reflect Chapter 725, L. 1991.

Section 77. 75-10-603. In (2) substitutes permissive requirements for mandatory requirements of cooperative agreements to conform to federal practice.

Section 78. 80-8-102. In (24)(c) substitutes "health and human

services" for "health, education, and welfare" to reflect changes in federal law.

Section 79. 81-22-101. In (6) substitutes "health and human services" for "health, education, and welfare" to reflect changes in federal law.

Section 80. 82-3-205. In (2) deletes reference to revocation of a retail coal dealers license to reflect the repeal of the license by Chapter 658, L. 1991.

Section 81. 85-9-604. Deletes reference to the Federal Savings and Loan Insurance Corporation, which has been merged with the Federal Deposit Insurance Corporation.

Section 82. 85-9-629. Deletes reference to the Federal Savings and Loan Insurance Corporation, which has been merged with the Federal Deposit Insurance Corporation.

Section 83. 87-1-504. Deletes (2), defining recreational purposes, to reflect the qualifying language concerning hunting and fishing added by Chapter 609, L. 1991.

Section 84. Code commissioner instruction. Section 1-11-101(2)(g)(ii) provides that recodification includes, without changing the meaning, effect, or intent of any law, correcting inaccurate or obsolete references to other code sections, such as those that have been repealed or repealed and replaced, when given authority by another statute. This section constitutes authority for the Code Commissioner to correct certain erroneous references without the necessity of legislative action.

Section 85. Repealer. Sections 2-15-3204 and 2-15-3205 concern the Governor's centennial mansion. Section 2-15-3204(2) provides that the council required to oversee restoration terminates June 30, 1993.

Section 2-89-207 governs the sale of centennial acres by the Montana Statehood centennial Office. The office has been terminated.

Sections 10-2-411, 10-2-413, 10-2-414, and 10-2-415 govern the selection of the site and the commencement of construction of the state veterans' home in eastern Montana. Those processes have been completed.

Section 30-6-112, enacted by Chapter 410, Laws of 1991, applies to filing requirements for bulk transfers. Chapter 410, Laws of 1991, repealed the bulk transfer law, rendering the filing provision meaningless.

SENATE BILL NO. 1

INTRODUCED BY LYNCH

BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND CLARIFYING THE MONTANA CODE ANNOTATED; DIRECTING THE CODE COMMISSIONER TO CLARIFY ERRONEOUS REFERENCES CONTAINED IN MATERIAL ENACTED BY THE 53RD LEGISLATURE; AMENDING SECTIONS 2-1-212, 2-89-202, 2-89-301, 2-89-302, 3-1-501, 3-2-704, 3-5-602, 3-12-106, 5-17-202, 7-4-2503, 7-4-2504, 7-6-4135, 7-12-2175, 7-12-4207, 7-14-102, 7-14-2524, 10-2-412, 10-2-416, 10-4-212, 13-37-226, 15-1-201, 15-1-202, 15-1-205, 15-24-101, 15-24-102, 15-30-101, 15-32-201, 15-36-112, 17-6-102, 17-6-104, 17-7-304, 19-1-102, 19-1-304, 19-1-401, 19-1-402, 19-1-503, 19-1-823, 19-12-202, 20-9-213, 20-10-146, 23-2-716, 23-2-717, 23-2-718, 25-34-102, 25-35-502, 25-35-503, 27-1-717, 27-25-102, 27-25-203, 27-26-102, 27-26-206, 27-27-102, 30-3-415, 32-2-406, 33-2-827, 33-11-105, 35-2-906, 37-17-304, 37-27-103, 37-61-202, 39-51-406, 41-5-306, 46-11-701, 46-18-101, 46-18-201, 46-18-225, 46-18-254, 46-23-201, 53-3-308, 53-19-305, 53-20-147, 53-21-147, 61-1-314, 61-4-120, 61-5-117, 75-10-512, 75-10-603, 80-8-102, 81-22-101, 82-3-205, 85-9-604, 85-9-629, AND 87-1-504, MCA; REPEALING SECTIONS 2-15-3204, 2-15-3205, 2-89-207, 10-2-411, 10-2-413, 10-2-414, 10-2-415, AND 30-6-112, MCA; AND PROVIDING EFFECTIVE DATES."





BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 2-1-212, MCA, is amended to read:

**"2-1-212. Acceptance of concurrent jurisdiction over veterans ~~administration~~ center.** The state of Montana hereby accepts the cession of concurrent jurisdiction with the United States over the real property comprising the veterans ~~administration~~ center, Fort Harrison, Montana, as ceded by Public Law 91-45~~,~~, 83 Stat. 48, which was approved July 19, 1969, and made effective upon acceptance of the cession by the state of Montana."

**Section 2.** Section 2-89-202, MCA, is amended to read:

**"2-89-202. Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Centennial acre" means one or more separate parcels of land of about ~~1~~ one acre located in Montana that are acquired by donation from a private source or designated land owned by the state. If there is more than one centennial acre, each separate parcel is to be designated ~~by the office~~ as a particular centennial acre, such as "the agricultural centennial acre" or "the mountain centennial acre".

(2) "Department" means the department of fish,



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wildlife, and parks.

~~(3)--"Office"-means--the--Montana--statehood--centennial office-as-provided-for-in-2-15-389-(now-terminated).~~"

**Section 3.** Section 2-89-301, MCA, is amended to read:

"2-89-301. (Temporary) Regular issue centennial license plates -- design of regular or commemorative plates. ~~(1)~~ The department of justice, in issuing license plates under the provisions of 61-3-321, shall provide for the issuance of regular license plates carrying a design recognizing the centennial of Montana's 1889 admission to statehood.

~~(2)--The-design-of-the-license-plates-issued--under--the provisions--of-2-89-302-or-this-section-must-be-developed-in consultation-with-the-Montana--statehood--centennial--office established--in--2-15-389-(now-terminated).~~ (Terminates July 1, 1996--sec. 4, Ch. 654, L. 1989.)"

**Section 4.** Section 2-89-302, MCA, is amended to read:

"2-89-302. (Temporary) Commemorative centennial license plates. (1) Notwithstanding the 4-year period provided for in 61-3-332(2), the department of justice may issue commemorative centennial license plates for a different period ~~if--requested--by--the--Montana-statehood-centennial office,~~ at prices to be ~~agreed--upon~~ determined by the department ~~and-the-office~~ as provided in 2-89-303.

(2) Commemorative license plates may be:

(a) collectors' license plates, intended to be





collectors' items only, distinctively marked or colored. ~~Such~~ The plates may be designated as not valid for the purpose of licensing motor vehicles within the state~~,-or~~.

(b) special or limited duration license plates valid for licensing motor vehicles in the state and carrying the same general centennial design as regularly issued license plates provided for in 2-89-301, except that they may differ from ~~such~~ regular license plates by:

(i) color;

(ii) use of a distinctive series of registration numbers or special prefixes or suffixes for the registration numbers; and

(iii) by other details not distracting from legibility or recognition of the license plate.

(3) (a) ~~For--all-licenses-sold-before-December-1,-1989,~~ The proceeds from the sale of commemorative license plates~~,~~ ~~after-payment-of-the-agreed-price-to-the-department,-must-be used--for-centennial-activities-of-the-office-as-provided-in part-1-(now-terminated)-of-this-chapter.--The--proceeds--for sales--occurring--after-November-30,-1989,~~ must be deposited in the general fund.

(b) A county shall assess an additional fee of $3 for each set of commemorative centennial license plates issued in the county to defray the costs incurred by the county treasurer. The county treasurer shall collect the fee and

deposit the money in the county general fund.

(c) The issuance of commemorative license plates must be made at no direct cost to the state.

(4) Commemorative license plates that are valid for licensing a motor vehicle must carry the assigned county number, as established in 61-3-332, either within the registration numbers or by means of an affixed nonremovable sticker bearing the appropriate county designation and used in accordance with instructions by the department. (Terminates July 1, 1996--sec. 4, Ch. 654, L. 1989.)"

**Section 5.** Section 3-1-501, MCA, is amended to read:

"**3-1-501. What acts or omissions are contempts.** (1) The following acts or omissions in respect to a court of justice or proceedings ~~therein~~ in a court of justice are contempts of the authority of the court:

(a) disorderly, contemptuous, or insolent behavior toward the judge while holding the court tending to interrupt the due course of a trial or other judicial proceeding;

(b) a breach of the peace, boisterous conduct, or violent disturbance tending to interrupt the due course of a trial or other judicial proceeding;

(c) misbehavior in office or other willful neglect or violation of duty by an attorney, counsel, clerk, sheriff, coroner, or other person appointed or elected to perform a





judicial or ministerial service;

(d) deceit or abuse of the process or proceedings of the court by a party to an action or special proceeding;

(e) disobedience of any lawful judgment, order, or process of the court;

(f) assuming to be an officer, attorney, or counsel of a court and acting as such without authority;

(g) rescuing any person or property in the custody of an officer by virtue of an order or process of ~~such~~ the court;

(h) unlawfully detaining a witness or party to an action while going to, remaining at, or returning from the court where the action is on the calendar for trial;

(i) any other unlawful interference with the process or proceedings of a court;

(j) disobedience of a subpoena duly served or refusing to be sworn or answer as a witness;

(k) when summoned as a juror in a court, neglecting to attend or serve as ~~such~~ a juror or improperly conversing with a party to an action to be tried at ~~such~~ the court or with any other person in relation to the merits of ~~such~~ the action or receiving a communication from a party or other person in respect to it without immediately disclosing the same to the court;

(l) disobedience by ~~an--inferior~~ a lower tribunal,

magistrate, or officer of the lawful judgment, order, or process of a superior court or proceeding in an action or special proceeding contrary to law after ~~such~~ the action or special proceeding is removed from the jurisdiction of ~~such inferior~~ the lower tribunal, magistrate, or officer.

(2) Disobedience of the lawful orders or process of a judicial officer is also a contempt of the authority of ~~such~~ the officer."

**Section 6.** Section 3-2-704, MCA, is amended to read:

"**3-2-704. Local rules.** ~~Any~~ A district court ~~and the supreme court~~ may adopt rules of court governing its practice so long as ~~such~~ the rules are not in conflict with the rules promulgated by the supreme court of the state of Montana in accordance with this part."

**Section 7.** Section 3-5-602, MCA, is amended to read:

"**3-5-602. Salary and expenses -- apportionment.** (1) Each reporter is entitled to receive a base annual salary of not less than $23,000 or more than $30,000 and no other compensation except as provided in 3-5-604. The salary ~~shall~~ must be set by the judge for whom the reporter works. The salary is payable in monthly installments out of the general funds of the counties comprising the district for which the reporter is appointed and out of an appropriation made to the ~~department of commerce~~ supreme court administrator as provided in subsection (2).





(2) The ~~department of commerce~~ supreme court administrator shall determine the total number of civil and criminal actions commenced in the preceding year in the district court or courts in the judicial district for which a reporter is appointed. The state shall pay its portion of the reporter's salary based on the proportion of the total number of criminal actions commenced in the district court or courts in the district and the amount appropriated for that purpose. Each county shall pay its portion of the remainder of the salary based on its proportion of the total number of civil and criminal actions commenced in the district courts in the district. The judge or judges of the district shall, on January 1 of each year or as soon thereafter as possible, apportion the amount of the salary to be paid by each county in ~~his or their~~ the district on the basis prescribed in this subsection. The portion of the salary payable by a county is a district court expense within the meaning of 7-6-2351, 7-6-2352, and 7-6-2511.

(3) In judicial districts comprising more than one county, the reporter is allowed, in addition to the salary and fees provided for in subsection (1), ~~his~~ actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, when ~~he goes~~ on official business to a county of ~~his~~ the reporter's judicial district other than the county in which ~~he~~ the reporter resides~~, from the~~

~~time--he--leaves--his--place--of--residence-until-he-returns thereto~~. The expenses ~~shall~~ must be apportioned and are payable in the same way as the salary."

**Section 8.** Section 3-12-106, MCA, is amended to read:

"**3-12-106. Jurisdiction -- removal from district court.** (1) The small claims court has original jurisdiction in all actions for the recovery of money or specific personal property when:

(a) ~~such~~ the action arises out of a contract, express or implied;

(b) the amount of the claim, exclusive of costs, does not exceed ~~$2,500~~ $3,000; and

(c) the defendant can be served within the county or counties for which the small claims court has been created.

(2) More than one claim may be joined if all claims joined would separately meet the requirements for jurisdiction in the small claims court and the total value of money claimed or property sought does not exceed ~~$2,500~~ $3,000.

(3) A district court judge may require any action filed in district court to be removed to the small claims court if the amount in controversy does not exceed ~~$2,500~~ $3,000. The small claims court shall hear ~~any~~ the action so removed from the district court."

**Section 9.** Section 5-17-202, MCA, is amended to read:





"**5-17-202. Capitol restoration commission -- composition -- allocation.** (1) There is a capitol restoration commission consisting of:

(a) the governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and state auditor, who are ex officio members of the commission. Each ex officio member may appoint up to two members from the public sector or private sector who shall serve for 4 years.

(b) the director of the Montana historical society and the state architect, who shall serve on the ~~committee~~ commission and assist the ~~committee~~ commission with technical support.

(2) The governor is the ~~president~~ presiding officer, and in ~~his~~ the governor's absence, the secretary of state shall preside. ~~, and the~~ The director of the department of administration is the secretary of the commission. In the absence of either the ~~president~~ presiding officer or the secretary, an officer pro tempore may be elected from the ex officio members.

(3) (a) The meetings of the commission are held at the call of the ~~president~~ presiding officer.

(b) If an ex officio member is unable to attend a meeting of the commission, ~~he~~ the member may designate another individual to attend ~~and represent him~~.

(4) The commission is allocated to the department of administration for administrative purposes only as prescribed in 2-15-121."

**Section 10.** Section 7-4-2503, MCA, is amended to read:

"**7-4-2503. Salary schedule for certain county officers.** (1) (a) The salary paid to the county treasurer, county clerk and recorder, clerk of the district court, county assessor, county superintendent of schools, and county sheriff; the county surveyor in counties where county surveyors receive salaries as provided in 7-4-2812; and the county auditor in all counties where the office is authorized, for the fiscal year beginning July 1, 1991, and each year thereafter must be established by the county governing body at no less than 80% of the annual base salary of:

(i) $25,000 for the counties of the first through fifth class added to the population increment of $10 for each 100 persons or major fraction thereof included in the county's population as determined by the 1990 federal decennial census; or

(ii) $18,000 for counties of the sixth and seventh class added to the population increment of $10 per 100 persons or major fraction thereof in the county's population as determined by the 1990 federal decennial census.

(b) The annual base established by the county governing





body in subsection (1) must be uniform for all county officers referred to in subsection (1).

(2) (a) An elected county superintendent of schools shall receive, in addition to the salary based upon subsection (1), the sum of $400 per year, except that an elected county superintendent of schools who holds a master of arts degree or a master's degree in education, with an endorsement in school administration, from a unit of the Montana university system or an equivalent institution may, at the discretion of the county commissioners, receive, in addition to the salary based upon subsection (1), up to $2,000 per year.

(b) The county sheriff shall receive, in addition to the salary based upon subsection (1), the sum of $2,000 per year.

(c) The county sheriff shall receive a longevity payment amounting to 1% of the base salary set forth in subsection (1) for each year of service with the sheriff's department, but years of service during any year in which the salary was set at the level of the salary of the prior fiscal year may not be included in any calculation of longevity increases. The additional salary amount provided for in this subsection may not be included in the base salary for purposes of computing the compensation for undersheriffs and deputy sheriffs as provided in 7-4-2508.

(3) (a) In each county with a population in excess of 30,000, the county attorney ~~shall~~ must be a full-time official under 7-4-2704, and ~~his~~ the salary for the fiscal year beginning July 1, 1991, ~~shall be~~ is $50,000 per year. In counties with a population less than 30,000, the county attorney who is a part-time official for a county of the first, second, or third class is entitled to receive an annual salary equal to 60% of the annual salary of a full-time county attorney. A county attorney who is a part-time official for a county of the fourth, fifth, sixth, or seventh class is entitled to receive an annual salary equal to 50% of the annual salary of a full-time county attorney.

(b) In those counties where the office of the county attorney has been established as a full-time position pursuant to 7-4-2706, the salary of the county attorney for the fiscal year beginning July 1, 1991, ~~shall be~~ is the same as that established for full-time county attorneys in subsection (3)(a).

(c) Beginning ~~on~~ July 1, 1991, and on July 1 of each succeeding year, each county attorney ~~shall be~~ is entitled to an increase in salary calculated by adding to ~~his~~ the annual salary on July 1, 1991, ~~an increment of 100% of~~ the percentage change in the ~~last~~ previous calendar year's consumer price index for all urban consumers, U.S.





department of labor, bureau of labor statistics, or other index that the bureau of business and economic research of the university of Montana may in the future recognize as the successor to that index. However, the county commissioners may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in 7-4-2504(1), set the salary at the prior fiscal year level if that level is lower than the level required by this subsection (3)(c). The cost-of-living increment for the fiscal year beginning July 1, 1983, and for each subsequent fiscal year ~~shall~~ must be added to all cost-of-living increments granted for previous years unless salaries were set for the fiscal year at the level of salaries received in the prior fiscal year. Unless restored pursuant to 7-4-2504(2), any cost-of-living increment that would have been received for ~~such~~ the fiscal year, computed on the prior fiscal year, may not be added to previous increments.

(d) (i) After completing 4 years of service as deputy county attorney, each deputy county attorney is entitled to an increase in salary of $1,000 on the anniversary date of ~~his~~ employment as deputy county attorney. After completing 5 years of service as deputy county attorney, each deputy county attorney is entitled to an additional increase in salary of $1,500 on the anniversary date of ~~his~~ employment. After completing 6 years of service as deputy county

attorney and for each year of service thereafter up to completion of the 11th year of service, each deputy county attorney is entitled to an additional annual increase in salary of $500.

(ii) The years of service as a deputy county attorney accumulated prior to July 1, 1985, must be included in the calculation of the longevity increase, but, unless longevity increases are restored pursuant to 7-4-2504(2), the years of service during any year in which the salary was set at the level of the salary of the prior fiscal year may not be included in any calculation of longevity increases.

(4) For each 10th year after the fiscal year beginning July 1, 1981, the latest federal decennial census statistics ~~shall be~~ are the basis for computation of population increments under this section. During the intervening 9 years, the computation of population increments applicable on July 1 of each year ~~shall be~~ is based on the ~~last~~ most current calendar year's ~~annual~~ estimates of counties' populations compiled by the federal-state cooperative program for estimates of the university of Montana bureau of business and economic research and the U.S. bureau of the census or other estimate that the bureau of business and economic research may certify."

**Section 11.** Section 7-4-2504, MCA, is amended to read:

"**7-4-2504. Salaries to be fixed by resolution --**





**cost-of-living increments.** (1) The county governing body shall by resolution on or before July 1, 1992, and on or before July 1 of each year thereafter adjust and uniformly fix the salaries of the county treasurer, county clerk, county assessor, county school superintendent, county sheriff, and the clerk of the district court; the county auditor (if there is one); and the county surveyor (if ~~he~~ the surveyor receives a salary). Except as provided in subsection (3), the salaries fixed may be no less than 80% of the annual base salary provided for in 7-4-2503(1) plus a cost-of-living increment based on the ~~last~~ previous calendar year's consumer price index for all urban consumers, U.S. department of labor, bureau of labor statistics, or other index that the bureau of business and economic research of the university of Montana may in the future recognize as the successor to that index. The county governing body may, however, for all or the remainder of each fiscal year, in conjunction with setting salaries for the same action on the salaries of justices of the peace (if applicable), the county governing body, county attorney, and coroner, set the salary at the prior fiscal year level if that level is lower than the level required by this subsection. The cost-of-living increment for the fiscal year beginning July 1, 1992, and for each subsequent fiscal year ~~shall~~ must be added to all cost-of-living increments granted for previous

years unless salaries were set for the fiscal year at the level of salaries received in the prior fiscal year. In such a case, the cost-of-living increment that would have been received for ~~such~~ the fiscal year, computed on the prior fiscal year, may not be added to previous increments.

(2) The county governing body may, in any subsequent fiscal year, restore for 1 or more years the annual cost-of-living increments withheld pursuant to subsection (1). If cost-of-living increments are restored, the longevity increases provided for sheriffs in 7-4-2503, for deputy county attorneys in 7-4-2503(3)(d)(i), and for undersheriffs and deputy sheriffs in 7-4-2510 must also be restored for the years for which the cost-of-living increment was restored.

(3) If the application of 7-4-2503 does not qualify a county official for a salary increase, ~~his~~ the salary base for the fiscal year beginning July 1, 1991, must be the fiscal year 1990-91 salary plus 100% of the last previous calendar year's consumer price index for all urban consumers, as set forth in subsection (1).

(4) The county governing body shall by resolution, prior to July 1 of each year, establish the salary of the coroner and may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in subsection (1), set the salary at





the prior fiscal year level. The salary must be in effect upon the first day of each ensuing fiscal year."

**Section 12.** Section 7-6-4135, MCA, is amended to read:

"**7-6-4135. Investment of money in capital improvement program fund.** The money held in the capital improvement program fund ~~shall~~ must, whenever possible, be invested in savings or time deposits in a state or national bank, savings and loan association, or credit union insured by the federal deposit insurance corporation, ~~federal savings and loan insurance corporation,~~ or by the national credit union administration or invested in direct obligations of the United States government and ~~shall~~ must be credited ~~back~~ to the fund plus interest earned."

**Section 13.** Section 7-12-2175, MCA, is amended to read:

"**7-12-2175. Investment of interest and sinking fund money.** (1) The governing body of a county in which a special improvement district is located may invest interest and sinking fund money of the district in time deposits of a bank, savings and loan association, or credit union insured by the federal deposit insurance corporation, ~~federal savings and loan insurance corporation,~~ or by the national credit union administration or invested in direct obligations of the United States government payable within 180 days from the time of investment.

(2) All interest collected on ~~such~~ deposits or

investments ~~shall~~ must be credited to the sinking fund from which the money was withdrawn."

**Section 14.** Section 7-12-4207, MCA, is amended to read:

"**7-12-4207. Investment of interest and sinking fund money.** (1) The governing body of a city in which a special improvement district is located may invest interest and sinking fund money of the district in time deposits of a bank, savings and loan association, or credit union insured by the federal deposit insurance corporation~~,---federal savings--and--loan-insurance-corporation,~~ or by the national credit union administration or invested in direct obligations of the United States government payable within 180 days from the time of investment.

(2) All interest collected on ~~such~~ deposits or investments ~~shall~~ must be credited to the sinking fund from which the money was withdrawn."

**Section 15.** Section 7-14-102, MCA, is amended to read:

"**7-14-102. Allocation of state funds for public transportation.** (1) (a) The department of transportation shall allocate each year one-half of the funds appropriated for the purposes of this section among the cities and urban transportation districts of the state ~~which~~ that operate or contract for the operation of general public transportation systems.

(b) (i) A city or urban transportation district is





eligible for an allocation based upon the ratio of its local financial support for public transportation to the total local financial support for all general public transportation systems in the state. Local financial support ~~shall~~ must be determined by dividing the city's or district's expenditure of local ~~revenues~~ revenue for public transportation operations during the fiscal year by the mill value of the city or urban transportation district. Each applicant city and urban transportation district shall compute its expenditure of local ~~revenues~~ revenue for public transportation operations for a fiscal year immediately following the end of ~~such~~ the fiscal year and shall apply allocations received against that deficit.

(ii) A city or urban transportation district may not receive more than 50% of any year's expenditure of local ~~revenues~~ revenue for public transportation operations as an allocation under this section.

(2) One-half of the funds appropriated for the purposes of this section ~~shall~~ must be paid by the department of transportation to the counties of the state in the manner provided in 15-70-101(1)~~(a)~~(b). Money distributed to counties under this section ~~shall~~ must be used by the counties for highway or other transportation purposes.

(3) The department of transportation may ~~make~~ adopt rules for the keeping of accounts for and otherwise

implementing this section."

**Section 16.** Section 7-14-2524, MCA, is amended to read:

"**7-14-2524. Limitation on amount of bonds issued -- excess void.** (1) Except as otherwise provided ~~hereafter--and~~ in 7-7-2203, ~~and~~ 7-7-2204, and this section, a county may not issue bonds ~~which~~ that, with all outstanding bonds and warrants except county high school bonds and emergency bonds, will exceed 11.25% of the total of the taxable value of the property ~~therein~~ in the county, plus the amount of interim production and new production taxes levied divided by the appropriate tax rates described in 15-23-607(2)(a) or (2)(b) and multiplied by 60%, plus the amount of value represented by new production exempted from tax as provided in 15-23-612 multiplied by 60%, plus the value of any other production occurring after December 31, 1988, multiplied by 60%. The taxable property and the amount of interim production and new production taxes levied must be ascertained by the last assessment for state and county taxes prior to the issuance of the bonds.

(2) A county may issue bonds ~~which~~ that, with all outstanding bonds and warrants except county high school bonds, will exceed 11.25% but will not exceed 22.5% of the total of the taxable value of ~~such~~ the property, plus the amount of interim production and new production taxes levied divided by the appropriate tax rates described in





15-23-607(2)(a) or (2)(b) and multiplied by 60%, plus the amount of value represented by new production exempted from tax as provided in 15-23-612 multiplied by 60%, plus the value of any other production occurring after December 31, 1988, multiplied by 60% when necessary for the purpose of replacing, rebuilding, or repairing county buildings, bridges, or highways ~~which~~ that have been destroyed or damaged by an act of God~~,~~ or by a disaster, catastrophe, or accident.

(3) The value of the bonds issued and all other outstanding indebtedness of the county, except county high school bonds, ~~shall~~ may not exceed 22.5% of the total of the taxable value of the property within the county, plus the amount of interim production and new production taxes levied divided by the appropriate tax rates described in 15-23-607(2)(a) or (2)(b) and multiplied by 60%, plus the amount of value represented by new production exempted from tax as provided in 15-23-612 multiplied by 60%, plus the value of any other production occurring after December 31, 1988, multiplied by 60%, as ascertained by the last preceding general assessment."

**Section 17.** Section 10-2-412, MCA, is amended to read:

"**10-2-412. State veterans' home in eastern Montana established.** A state home for veterans is established in eastern Montana ~~at-a-site--to--be--determined--by--the--site~~

~~selection-committee-as-provided-in-10-2-413.~~"

**Section 18.** Section 10-2-416, MCA, is amended to read:

"**10-2-416. Pledge to continue operation and maintenance.** Pursuant to 38 U.S.C. 641 and 5035(a)(6), the state shall appropriate from the general fund to the department of corrections and human services financial support necessary to provide for continued operation and maintenance of the ~~project-upon-completion~~ state home for veterans in eastern Montana."

**Section 19.** Section 10-4-212, MCA, is amended to read:

"**10-4-212. Provider considered a taxpayer under provisions for fee.** Unless the context requires otherwise, the provisions of Title 15 referring to the audit and examination of reports and returns, determination of deficiency assessments, claims for refunds, penalties, interest, jeopardy assessments, warrants, conferences, appeals to the department of revenue, appeals to the state tax appeal board, and procedures relating thereto apply to ~~10-4-201-through-10-4-205-and-10-4-211-the-same~~ this part as if the fee were a tax imposed upon or measured by net income. ~~All-such~~ The provisions apply to the subscriber liable for the fee and to the provider required to collect the fee. ~~As-to-any~~ Any amount collected and required to be remitted to the department of revenue~~,-the-fee~~ is considered a tax upon the provider required to collect it, and that





provider is considered a taxpayer."

**Section 20.** Section 13-37-226, MCA, is amended to read:

"**13-37-226. Time for filing reports.** (1) Candidates for a state office filled by a statewide vote of all the electors of Montana and political committees that are organized to support or oppose a particular statewide candidate shall file reports:

(a) quarterly, due on the fifth day following a calendar quarter, beginning with the calendar quarter in which funds are received or expended during the year or years prior to the election year that the candidate expects to be on the ballot;

(b) on the 10th day of March and September in each year that an election is to be held and on the 15th and 5th days next preceding the date on which an election is held and within 24 hours after receiving a contribution of $500 or more if received between the 10th day before and the day of the election;

(c) not more than 20 days after the date of the election; and

(d) on the 10th day of March and September of each year following an election until the candidate or political committee files a closing report as specified in 13-37-228(3).

(2) Political committees organized to support or oppose

a particular statewide ballot issue shall file reports:

(a) quarterly, due on the fifth day following a calendar quarter, beginning with the calendar quarter in which funds are received or expended during the year or years prior to the election year that an issue subject to a referendum is or is expected to be on the ballot;

(b) on the 10th day of March and on the 10th day of each subsequent month through September;

(c) on the 15th and 5th days preceding the date on which an election is held;

(d) within 24 hours after receiving a contribution of $500 or more if received between the 10th day before the election and the day of the election;

(e) within 20 days after the election; and

(f) on the 10th day of March and September of each year following an election until the political committee files a closing report as specified in 13-37-228(3).

(3) Candidates for a state district office, including but not limited to candidates for the legislature, the public service commission, or a district court judge, and political committees ~~which~~ that are specifically organized to support or oppose a particular state district candidate or issue shall file reports:

(a) on the 10th day next preceding the date on which an election is held and within 24 hours after receiving a





contribution of $100 or more if received between the 15th day before and the day of the election;

(b) not more than 20 days after the date of the election; and

(c) whenever a candidate or political committee files ~~his or its~~ a closing report as specified in 13-37-228(3).

(4) Candidates for any other public office and political committees ~~which~~ that are specifically organized to support or oppose a particular local issue shall be ~~required to~~ file the reports specified in subsection (3) only if the total amount of contributions received or the total amount of funds expended for all elections in a campaign, excluding the filing fee paid by the candidate, exceeds $500, except as provided in 13-37-206.

(5) For the purposes of this subsection, a committee ~~which~~ that is not specifically organized to support or oppose a particular candidate or ballot issue and ~~which~~ that receives contributions and makes expenditures in conjunction with an election is an independent committee. For the purpose of reporting, a political party committee is an independent committee. An independent committee shall file reports:

(a) on the 10th day next preceding the date of an election in which it participates by making an expenditure;

(b) not more than 20 days after the date of the

election in which it participates by making an expenditure; and

(c) a closing report at the close of each calendar year, on a date to be prescribed by the commissioner.

(6) The commissioner may promulgate rules regarding the extent to which organizations that are not primary political committees but are incidental political committees shall report their politically related activities in accordance with this chapter.

(7) All reports required by this section ~~shall~~ must be complete as of the fifth day before the date of filing as specified in 13-37-225(2) and ~~subsections (1) through (6) of~~ this section."

**Section 21.** Section 15-1-201, MCA, is amended to read:

"**15-1-201. Administration of revenue laws.** (1) (a) The department of revenue shall have and exercise general supervision over the administration of the assessment and tax laws of the state~~,~~, except Title 15, chapter 70,~~,~~ and over its agents and any officers of municipal corporations having any duties to perform under any of the laws of this state relating to taxation to the end that all assessments of property be made relatively just and equal at true value in substantial compliance with law. ~~and~~ The department may make rules to supervise the administration of all revenue laws of the state and assist in their enforcement.





(b) The department of revenue shall adopt rules specifying which types of property within the several classes are considered "comparable property" as described in 15-1-101.

(c) The department shall also adopt rules specifying the methodology to be used in conducting sales assessment ratio studies and in determining the value-weighted mean sales assessment ratio for all commercial and industrial real property and improvements.

(2) The department shall confer with, advise, and direct officers of municipal corporations as to their duties, with respect to taxation, under the statutes of the state.

(3) The department shall collect annually from the proper officers of the municipal corporations information about the assessment of property, collection of taxes, receipts from licenses and other sources, the expenditure of public funds for all purposes, and ~~such~~ other information as may be needful and helpful in the work of the department in ~~such~~ a form ~~and upon such blanks as~~ prescribed by the department ~~shall prescribe~~. It ~~shall be~~ is the duty of all public officers ~~so called upon~~ to fill out properly and return promptly to the department all ~~blanks so transmitted~~ forms and ~~in every way~~ aid the department in its work. The department shall examine the records of all municipal

corporations for ~~such~~ purposes ~~as are~~ considered needful or helpful."

**Section 22.** Section 15-1-202, MCA, is amended to read:

"**15-1-202. Enforcement of revenue laws.** (1) The department of revenue may direct proceedings, actions, and prosecutions to be instituted to enforce the laws relating to the penalties, liabilities, and punishment of public officials and persons or their agents for failure or neglect to comply with the provisions of the statutes~~,~~ except Title 15, chapter 70,~~,~~ governing the revenue of the state or municipal corporations. The department shall cause complaints to be made against assessors and other public officers to the proper district court for their removal from office for official misconduct, neglect of duty, or failure of an assessor to comply with the certification or continuing education requirements of 15-8-106.

(2) The department may require county attorneys to assist in the commencement and prosecution of actions and proceedings in their respective counties for penalties, forfeitures, removals, and punishment for violations of the laws of the state in respect to the assessment of property and other revenue laws or for failure of an assessor to comply with the certification or continuing education requirements of 15-8-106.

(3) Nothing in this section affects the authority of





any other person, public officer, or public body to pursue any other legal process for the removal from office of an assessor who forfeits office for failure to comply with certification and continuing education requirements."

**Section 23.** Section 15-1-205, MCA, is amended to read:

"**15-1-205. Biennial report -- contents.** (1) The department shall transmit to the governor 20 days before the meeting of the legislature and, as provided in 5-11-210, submit to the legislature a report of the department showing all the taxable property of the state, counties, and cities and its value, in tabulated form, with recommendations for improvements in the system of taxation, together with alternative measures as may be formulated for the consideration of the legislature.

(2) The report or supplements to the report may also include:

(a) the gross dollar amount of revenue loss attributable to:

(i) personal income and corporation license tax exemptions;

(ii) property tax exemptions for which application to the department or its agent is necessary;

(iii) deferral of income;

(iv) credits allowed against Montana personal income tax or Montana corporation license tax, reported separately;

(v) deductions from income; and

(vi) any other identifiable preferential treatment of income or property;

(b) any change in tax revenue of the state or any unit of local government attributable to a change in federal tax law; and

(c) any change in the revenue of any unit of local government attributable to a change in state tax law.

(3) The data described in subsection (2), if reported, must be related to the income and age of the taxpayer whenever ~~such~~ the information is available.

(4) (a) When reporting the data described in subsection (2)(a), the department shall identify any known purpose of the preferential treatment.

(b) Based upon the purpose of the preferential treatment, the department shall outline the available data necessary to determine the effectiveness of the preferential treatment.

(5) In reporting the data described in subsection (2), the department shall report any comparable data, if available, from Wyoming, Idaho, North Dakota, and South Dakota and from any other state the department may choose.

(6) The department ~~must~~ shall identify in a separate section of the report any changes that have been made or that are contemplated in property appraisal or assessment.





(7) The department may include a report, prepared by the department of transportation, showing the selling price of gasoline at the wholesale level in prime market centers of Montana and in surrounding states during the biennium, with indexes tabulated at sufficient intervals to show the comparative state price structures."

**Section 24.** Section 15-24-101, MCA, is amended to read:

"**15-24-101. Assessment of proportionally registered interstate motor vehicle fleets -- tax payment required for registration.** (1) The department of revenue shall assess, for the purpose of personal property taxes, the taxable vehicles in interstate motor vehicle fleets proportionally registered under the provisions of 61-3-711 through 61-3-733, and the assessment must be apportioned on the ratio of total miles traveled to in-state miles traveled formula as prescribed by 61-3-721. Interstate motor vehicle fleets are assessable for taxation purposes upon application for proportional registration and are assessed to the persons who own or claim the fleet or in whose possession or control the fleet is at the time of the application.

(2) With respect to any fleet contained in an original application ~~which~~ that has a situs for purpose of property taxation in Montana by the terms of this part or any other provision of the laws of Montana, the taxes on taxable vehicles are apportioned as provided in 15-24-303.

(3) With respect to any fleet contained in a renewal application, the taxable vehicles are assessed and taxed for a full year.

(4) Automobiles and trucks having a rated capacity of ~~three-quarters-of-a~~ 1 ton or less that are part of an interstate motor vehicle fleet are subject to property tax. If the fleet is proportionally registered, the tax is apportioned in the same fashion as the registration fee under 61-3-721.

(5) Vehicles contained in a fleet for which current taxes, fees, or both have been assessed and paid may not be assessed or charged fees under this section upon presentation to the department of proof of payment of taxes, ~~or~~ fees, or both for the current registration year. The payment of personal property taxes, fees, or both~~,~~ is a condition precedent to proportional registration or reregistration of an interstate motor vehicle fleet."

**Section 25.** Section 15-24-102, MCA, is amended to read:

"**15-24-102. Valuation of interstate fleets -- determination of aggregate tax due.** The department of revenue shall assess the taxable vehicles of any interstate motor vehicle fleet making application for proportional registration as follows:

(1) The purchase price of the taxable vehicles depreciated by a schedule as prescribed by the department





~~shall determine~~ determines the depreciated value.

(2) The depreciated value multiplied by the percent of miles traveled in Montana, as prescribed by 61-3-721, ~~shall be~~ is the ~~assessed~~ market value.

(3) The sum of the ~~assessed~~ market value of all taxable vehicles included in the fleet multiplied by ~~16%-shall-be~~ 9% is the taxable value for the entire fleet.

(4) To determine the amount of tax due, the taxable value of the entire fleet ~~shall~~ must be multiplied by the statewide average county mill levy plus state levies as ~~hereinafter~~ provided in 15-24-103."

**Section 26.** Section 15-30-101, MCA, is amended to read:

"**15-30-101. Definitions.** For the purpose of this chapter, unless otherwise required by the context, the following definitions apply:

(1) "Base year structure" means the following elements of the income tax structure:

(a) the tax brackets established in 15-30-103, but unadjusted by subsection (2) of 15-30-103, in effect on June 30 of the taxable year;

(b) the exemptions contained in 15-30-112, but unadjusted by 15-30-112(6), in effect on June 30 of the taxable year;

(c) the maximum standard deduction provided in 15-30-122, but unadjusted by subsection (2) of 15-30-122, in

effect on June 30 of the taxable year.

(2) "Consumer price index" means the consumer price index, United States city average, for all items, using the 1967 base of 100 as published by the bureau of labor statistics of the U.S. department of labor.

(3) "Department" means the department of revenue.

(4) "Dividend" means any distribution made by a corporation out of its earnings or profits to its shareholders or members, whether in cash or in other property or in stock of the corporation, other than stock dividends ~~as--herein--defined. "Stock-dividends"-means-new stock--issued,--for--surplus--or--profits--capitalized,---to shareholders-in-proportion-to-their-previous-holdings.~~

(5) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate.

(6) "Foreign country" or "foreign government" means any jurisdiction other than the one embraced within the United States, its territories, and its possessions.

(7) "Gross income" means the taxpayer's gross income for federal income tax purposes as defined in section 61 of the Internal Revenue Code of 1954 or as that section may be labeled or amended, excluding unemployment compensation included in federal gross income under the provisions of





section 85 of the Internal Revenue Code of 1954 as amended.

(8) "Inflation factor" means a number determined for each taxable year by dividing the consumer price index for June of the taxable year by the consumer price index for June, 1980.

(9) "Information agents" includes all individuals, corporations, associations, and partnerships, acting in whatever capacity ~~acting~~, including lessees or mortgagors of real or personal property, fiduciaries, brokers, real estate brokers, employers, and all officers and employees of the state or of any municipal corporation or political subdivision of the state, having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income with respect to which any person or fiduciary is taxable under this chapter.

(10) "Knowingly" is as defined in 45-2-101.

(11) "Net income" means the adjusted gross income of a taxpayer less the deductions allowed by this chapter.

(12) "Paid", for the purposes of the deductions and credits under this chapter, means paid or accrued or paid or incurred, and the terms "paid or accrued" and "paid or incurred" ~~and "paid-or--accrued"--shall~~ must be construed according to the method of accounting upon the basis of

which the taxable income is computed under this chapter.

(13) "Pension and annuity income" means:

(a) systematic payments of a definitely determinable amount from a qualified pension plan, as that term is used in section 401 of the Internal Revenue Code, or systematic payments received as the result of contributions made to a qualified pension plan that are paid to the recipient or recipient's beneficiary upon the cessation of employment;

(b) payments received as the result of past service and cessation of employment in the uniformed services of the United States;

(c) lump-sum distributions from pension or profitsharing plans to the extent that the distributions are included in federal adjusted gross income;

(d) distributions from individual retirement, deferred compensation, and self-employed retirement plans recognized under sections 401 through 408 of the Internal Revenue Code to the extent that the distributions are not considered to be premature distributions for federal income tax purposes; or

(e) amounts ~~after--cessation--of--regular---employment~~ received from fully matured, privately purchased annuity contracts after cessation of regular employment.

(14) "Purposely" is as defined in 45-2-101.

(15) "Received", for the purpose of computation of





taxable income under this chapter, means received or accrued, and the term "received or accrued" ~~shall~~ must be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

(16) "Resident" applies only to natural persons and includes, for the purpose of determining liability to the tax imposed by this chapter with reference to the income of any taxable year, any person domiciled in the state of Montana and any other person who maintains a permanent place of abode within the state even though temporarily absent from the state and who has not established a residence elsewhere.

(17) "Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in proportion to their previous holdings.

~~(17)~~(18) "Taxable income" means the adjusted gross income of a taxpayer less the deductions and exemptions provided for in this chapter.

~~(18)~~(19) "Taxable year" or "tax year" means the taxpayer's taxable year for federal income tax purposes.

~~(19)~~(20) "Taxpayer" includes any person or fiduciary, resident or nonresident, subject to a tax imposed by this chapter and does not include corporations."

**Section 27.** Section 15-32-201, MCA, is amended to read:

"15-32-201. Amount of credit -- to whom available. (1) A resident individual taxpayer who completes installation of an energy system using a recognized nonfossil form of energy generation, as defined in 15-32-102, in ~~such~~ the taxpayer's principal dwelling prior to January 1, 1993, or who acquires title to a dwelling prior to January 1, 1993, that is to be used as the taxpayer's principal dwelling and is equipped with an energy system for which the credit allowed by this part has never been claimed~~,~~ is entitled to claim a tax credit in an amount equal to 10% of the first $1,000 and 5% of the next $3,000 of the cost of ~~such~~ the system, including installation costs, less grants received or, if the federal government provides for a tax credit substantially similar in kind (not in amount), then a tax credit in an amount equal to 5% of the first $1,000 and 2 1/2% of the next $3,000 of the cost of ~~such~~ the system, including installation costs, less grants received, against the income tax liability imposed against ~~such~~ the taxpayer pursuant to chapter 30.

(2) A resident individual taxpayer who completes installation of an energy system using a low emission wood or biomass combustion device, as defined in 15-32-102~~(5)(a)~~(6)(a), in the taxpayer's principal dwelling prior to January 1, 1996, is entitled to claim a tax credit in an amount equal to 20% of the first $1,000 and 10% of the





next $3,000 of the cost of the system, including the installation costs, against the income tax liability imposed against the taxpayer pursuant to Title 15, chapter 30.

(3) A resident individual taxpayer who completes installation of an energy system that uses a low emission wood or biomass combustion device, as defined in 15-32-102~~(5)(b)~~(6)(b), in the taxpayer's principal dwelling prior to January 1, 1996, is entitled to claim a tax credit in an amount equal to 10% of the first $1,000 and 5% of the next $3,000 of the cost of the system, including the installation costs, against the income tax liability imposed against the taxpayer pursuant to Title 15, chapter 30."

**Section 28.** Section 15-36-112, MCA, is amended to read:

**"15-36-112. Disposition of oil and gas state and local government severance taxes -- calculation of unit value for local government severance tax.** (1) Each year the department of revenue shall determine the amount of tax collected under this chapter from within each taxing unit.

(2) For purposes of the distribution of local government severance taxes collected under this chapter, the department shall determine the unit value of oil and gas for each taxing unit as follows:

(a) The unit value for petroleum and other mineral or crude oil for each taxing unit is the quotient obtained by dividing the net proceeds taxes calculated on petroleum or

mineral or crude oil produced in that taxing unit in calendar year 1988 by the number of barrels of petroleum or other mineral or crude oil produced in that taxing unit during 1988, excluding new and interim production.

(b) The unit value for natural gas is the quotient obtained by dividing the net proceeds taxes calculated on natural gas produced in that taxing unit in calendar year 1988 by the number of cubic feet of natural gas produced in that taxing unit during 1988, excluding new and interim production.

(3) The state and local government severance taxes collected under this chapter are allocated as follows:

(a) The local government severance tax is statutorily appropriated, as provided in 17-7-502, for allocation to the county for distribution as provided in subsection (4)~~;~~.

(b) The state severance tax is allocated to the state general fund.

(4) (a) For the purpose of distribution of the local government severance tax, the department shall adjust the unit value determined under this section according to the ratio that the local government severance taxes collected during the quarters to be distributed plus accumulated interest earned by the state and penalties and interest on delinquent local government severance taxes bears to the total liability for local government severance taxes for the





quarters to be distributed. The taxes must be calculated and distributed as follows:

(i) By November 30 of each year, the department shall calculate and distribute to each eligible county the amount of local government severance tax, determined by multiplying unit value as adjusted in this subsection (4)(a) times the units of production on which the local government severance tax was owed during the calendar quarters ending March 31 and June 30 of the preceding calendar year.

(ii) By May 31 of each year, the department shall calculate and distribute to each eligible county the amount of local government severance tax, determined by multiplying unit value as adjusted in this subsection (4)(a) times the units of production on which the local government severance tax was owed during the 2 calendar quarters immediately following those quarters referred to in subsection (4)(a)(i).

(b) Any amount by which the total tax liability exceeds or is less than the total distributions determined in subsections (4)(a)(i) and (4)(a)(ii) must be calculated and distributed in the following manner:

(i) The excess amount or shortage must be divided by the total distribution determined for that period to obtain an excess or shortage percentage.

(ii) The excess percentage must be multiplied by the

distribution to each taxing unit, and this amount must be added to the distribution to each respective taxing unit.

(iii) The shortage percentage must be multiplied by the distribution to each taxing unit, and this amount must be subtracted from the distribution to each respective taxing unit.

(5) Except as provided in subsection (6), the county treasurer shall distribute the money received under subsection (4) to the taxing units that levied mills in fiscal year 1990 against calendar year 1988 production in the same manner that all other property tax proceeds were distributed during fiscal year 1990 in the taxing unit, except that no distribution may be made to a municipal taxing unit.

(6) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of local government severance tax money that would have gone to a taxing unit, as provided in subsection (5), to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

(a) The county treasurer shall first allocate the ~~local government severance~~ taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in





fiscal year 1990.

(b) If the allocation in subsection (6)(a) exceeds the total budget for a taxing unit, the commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

(7) The board of trustees of an elementary or high school district may reallocate the ~~local government severance~~ taxes distributed to the district by the county treasurer under the following conditions:

(a) The district shall first allocate the ~~local government severance~~ taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in fiscal year 1990.

(b) If the allocation under subsection (7)(a) exceeds the total budget for a fund, the trustees may allocate the excess to any budgeted fund of the school district."

**Section 29.** Section 17-6-102, MCA, is amended to read:

"17-6-102. **Insurance on deposits.** (1) ~~No such deposits~~ Deposits in excess of the amount insured by the federal deposit insurance corporation, ~~federal savings and loan insurance corporation,~~ or the national credit union administration ~~shall~~ may not be made unless the bank, building and loan association, savings and loan association, or credit union first delivers to the state treasurer or

deposits in trust with some solvent bank, ~~as hereinafter provided,~~ as security therefor, bonds or other obligations of the kinds listed in 17-6-103, having a market value equal to at least 50% of the amount of ~~such~~ the deposits in excess of the amount ~~so~~ insured. The board of investments may require security of a greater value. When negotiable securities are placed in trust, the trustee's receipt may be accepted instead of the actual securities if the receipt is in favor of the state treasurer, ~~his~~ successors in office, and the state of Montana and the form of receipt and the trustee have been approved by the board of investments.

(2) Any bank, building and loan association, savings and loan association, or credit union pledging securities as provided in this section may at any time substitute securities for any part of the securities pledged. The substituted collateral ~~so substituted shall~~ must conform to 17-6-103 and have a market value at least sufficient for compliance with subsection (1) ~~above~~. If the substituted securities ~~so substituted~~ are held in trust, the trustee shall, on the same day the substitution is made, forward by registered or certified mail to the state treasurer and to the depository financial institution a receipt specifically describing and identifying both the securities substituted and those released and returned to the depository financial institution."





**Section 30.** Section 17-6-104, MCA, is amended to read:

"**17-6-104. Interest on deposits -- conformity with federal law.** (1) The board of investments may require the payment of ~~quarter~~ quarterly annual interest on daily balances of collected funds at a rate to be agreed upon between the depository banks, building and loan associations, savings and loan associations, credit unions, and the board of investments. ~~, which~~ The rate ~~shall~~ must be fixed semiannually during the months of July and January of each year.

(2) The interest requirements on deposits of public funds made under the laws of the state of Montana or otherwise by county or city treasurers or town clerks may not at any time be in violation of any act of the congress of the United States or of any rule or regulation of the federal reserve system, federal home loan bank system, or the federal deposit insurance corporation, ~~federal savings and loan insurance corporation,~~ national credit union administration, or any other fiscal agency of the United States of which the banks, building and loan associations, savings and loan associations, or credit unions of this state may be members or debtors."

**Section 31.** Section 17-7-304, MCA, is amended to read:

"**17-7-304. (Temporary) Disposal of unexpended appropriations.** (1) All money appropriated for any specific

purpose except ~~those~~ that appropriated for the university system units listed in subsection (2) ~~shall~~ must, after the expiration of the time for which appropriated, revert to the several funds and accounts from which originally appropriated. However, any unexpended balance in any specific appropriation may be used for the years for which the appropriation was made.

(2) Except as provided in 17-2-108 and subsection (3) of this section, all money appropriated for the university of Montana at Missoula, Montana state university at Bozeman, Montana college of mineral science and technology at Butte, eastern Montana college at Billings, northern Montana college at Havre, western Montana college of the university of Montana at Dillon, the agricultural experiment station with central offices at Bozeman, the forest and conservation experiment station with central offices at Missoula, the cooperative extension service with central offices at Bozeman, the bureau of mines and geology with central offices in Butte, and the vocational-technical centers at Billings, Butte, Great Falls, Helena, and Missoula must, after the expiration of the time for which appropriated, revert to an account held by the board of regents. The board of regents is authorized to maintain a fund balance. There is a statutory appropriation, as provided in 17-7-502, to use the funds held in this account in accordance with a





long-term plan for major and deferred maintenance expenditures and equipment or fixed assets purchases prepared by the affected university system units and approved by the board of regents. The affected university system units may, with the approval of the board of regents, modify the long-term plan at any time to address changing needs and priorities. The board of regents shall communicate the plan to each legislature, to the finance committee when requested by the committee, and to the office of budget and program planning.

(3) Subsection (2) does not apply to reversions that are the result of a reduction in spending directed by the governor pursuant to 17-7-140. Any amount that is a result of a reduction in spending directed by the governor must revert to the fund or account from which it was originally appropriated. (Terminates June 30, 1996--sec. 23, Ch. 787, L. 1991; sec. 5, Ch. 5, Sp. L. July 1992.)

**17-7-304. (Effective July 1, 1996) Disposal of unexpended appropriations.** All ~~moneys~~ money appropriated for any specific purpose ~~except--those--appropriated--for-the university-system-units--listed--in--subsection--(2)--shall,~~ must, after the expiration of the time for which ~~so~~ appropriated, revert to the several funds and accounts from which originally appropriated. However, any unexpended balance in any specific appropriation may be used for the

years for which the appropriation was made."

**Section 32.** Section 19-1-102, MCA, is amended to read:

"19-1-102. Definitions. For the purposes of this chapter, the following definitions apply:

(1) The term "employee" includes an elective or appointive officer or employee of the state or a political subdivision ~~thereof~~ of the state.

(2) (a) The term "employment" means any service performed by an employee in the employ of the state or any political subdivision ~~thereof~~ of the state for ~~such~~ the employer, except:

(i) service ~~which~~ that in the absence of an agreement entered into under this chapter would constitute "employment" as defined in the Social Security Act; or

(ii) service ~~which~~ that under the Social Security Act may not be included in an agreement between the state and the secretary of health~~,--education,--and--welfare~~ and human services entered into under this chapter.

(b) Service performed by civilian employees of national guard units is specifically included within the term "employment".

(c) Service ~~which~~ that under the Social Security Act may be included in an agreement only upon certification by the governor in accordance with section 218(d)(3) of that act is included in the term "employment" if and when the





governor issues, with respect to ~~such~~ the service, a certificate to the secretary of health~~,--education,--and welfare~~ and human services pursuant to 19-1-304.

(3) The term "Federal Insurance Contributions Act" means subchapter A of chapter 9 of the federal Internal Revenue Code of 1939 and subchapters A and B of chapter 21 of the federal Internal Revenue Code of 1954, as ~~such~~ the codes have been and may from time to time be amended; and the term "employee tax" means the tax imposed by section 1400 of ~~such~~ the Code of 1939 and section 3101 of ~~such~~ the Code of 1954 and as ~~such~~ the codes may from time to time be amended.

(4) The term "political subdivision" includes an instrumentality of the state, of one or more of its political subdivisions, or of the state and one or more of its political subdivisions, including leagues or associations ~~thereof~~, but only if the instrumentality is a juristic entity ~~which~~ that is legally separate and distinct from the state or subdivision and only if its employees are not by virtue of their relation to the juristic entity employees of the state or subdivision. The term includes special districts or authorities created by the legislature or local governments, such as but not limited to school districts, and housing authorities~~,--etc~~.

(5) The term "secretary of health~~,--education,--and~~

welfare and human services" means the secretary of the United States department of health~~,--education,--and--welfare~~ and human services; includes any individual to whom the secretary of health~~,--education,--and--welfare~~ and human services has delegated any ~~of his~~ functions under the Social Security Act with respect to coverage under that act of employees of states and their political subdivisions; and, with respect to any action taken prior to April 11, 1953, includes the federal security administrator and any individual to whom the administrator had delegated any ~~such~~ function.

(6) The term "Social Security Act" means the act of congress approved August 14, 1935, chapter 531, 49 Stat. 620, officially cited as the "Social Security Act", including regulations and requirements issued pursuant ~~thereto~~ to the act, as ~~such~~ the act has been and may ~~from time to time~~ be amended.

(7) The term "state agency" means the public employees' retirement board of the public employees' retirement system of the state of Montana.

(8) The term "wages" means all remuneration for employment ~~as defined herein~~, including the cash value of all remuneration paid in any medium other than cash, except that the term does not include that part of remuneration ~~which~~ that, even if it were for "employment" within the





meaning of the Federal Insurance Contributions Act, would not constitute "wages" within the meaning of that act."

**Section 33.** Section 19-1-304, MCA, is amended to read:

"**19-1-304. Certification by governor.** Upon receiving satisfactory evidence ~~satisfactory to him~~ that with respect to ~~any such~~ a referendum the conditions specified in section 218(d)(3) of the Social Security Act have been met, the governor shall ~~so~~ certify the results of the referendum to the secretary of health~~,--education,--and--welfare~~ and human services."

**Section 34.** Section 19-1-401, MCA, is amended to read:

"**19-1-401. Authority for federal-state agreement.** The state agency, with the approval of the governor, ~~is hereby authorized to~~ may enter, on behalf of the state, into an agreement with the secretary of health~~,--education,--and welfare~~ and human services, consistent with the terms and provisions of this chapter, for the purpose of extending the benefits of the federal old age and survivors' insurance system to employees of the state or any political subdivision ~~thereof~~ of the state with respect to services specified in ~~such~~ the agreement ~~which~~ that constitute "employment", as defined in 19-1-102."

**Section 35.** Section 19-1-402, MCA, is amended to read:

"**19-1-402. Contents of federal-state agreement.** ~~Such~~ The agreement authorized by 19-1-401 may contain ~~such~~

provisions relating to coverage, benefits, contributions, effective date, modification and termination of the agreement, administration, and other appropriate provisions as the state agency and secretary of health~~,education,~~ ~~and~~ welfare and human services shall agree upon, but, except as may be otherwise required or permitted by or under the Social Security Act as to the services to be covered, ~~such~~ the agreement ~~shall~~ must provide in effect that:

(1) benefits will be provided for employees whose services are covered by the agreement (and their dependents and survivors) on the same basis as though ~~such~~ the services constituted employment within the meaning of Title II of the Social Security Act;

(2) the state will pay to the secretary of the treasury of the United States, at ~~such~~ a time or times as may be prescribed under the Social Security Act, contributions with respect to wages~~,as-defined-in-19-1-102,~~ equal to the sum of the taxes ~~which~~ that would be imposed by the Federal Insurance Contributions Act if the services covered by the agreement constituted employment within the meaning of that act;

(3) ~~such~~ the agreement ~~shall~~ must be effective with respect to services in employment covered by the agreement performed after a date specified ~~therein~~ in the agreement, but ~~in no event~~ may it not be effective with respect to ~~any~~





~~such~~ services performed prior to the first day of the calendar year in which ~~such~~ the agreement is entered into or in which the modification of the agreement making it applicable to ~~such~~ services is entered into, except that ~~such~~ the effective date may be made retroactive to the extent permitted by section 218(f) of the Social Security Act~~,as-defined-herein~~;

(4) all services ~~which~~ that constitute employment ~~as defined in 19-1-102~~ and are performed in the employ of the state by employees of the state ~~shall~~ must be covered by the agreement; and

(5) all services ~~which~~ that constitute employment ~~as defined in 19-1-102~~, are performed in the employ of a political subdivision of the state, and are covered by a plan ~~which~~ that is in conformity with the terms of the agreement and has been approved by the state agency under part 5 ~~shall~~ must be covered by the agreement."

**Section 36.** Section 19-1-503, MCA, is amended to read:

"19-1-503. Required provisions of plan. ~~No~~ A plan may not be approved unless:

(1) it is in conformity with the requirements of the Social Security Act and with the agreement entered into under 19-1-401 and 19-1-402;

(2) it provides that all services ~~which~~ that constitute employment ~~as defined in 19-1-102~~ and that are performed in

the employ of the political subdivisions by employees ~~thereof~~ of the political subdivisions will be covered by the plan, except that it may exclude services performed by individuals to whom section 218(c)(3)(C) of the Social Security Act is applicable;

(3) it specifies the sources from which the funds necessary to make the payments required by 19-1-704 and 19-1-706 are expected to be derived and contains reasonable assurance that the sources will be adequate ~~for such purpose~~ to make the payments;

(4) it provides for ~~such~~ methods of administration of the plan by the political subdivision as are found by the state agency to be necessary for the proper and efficient administration of the plan;

(5) it provides that the political subdivision will make ~~such~~ reports, in ~~such~~ a form and containing ~~such~~ information, as the state agency may ~~from time to time~~ require and will comply with ~~such~~ the provisions ~~as~~ that the state agency or the secretary of health~~,--education,--and welfare~~ and human services ~~may from time to time find~~ finds necessary to assure the correctness and verification of ~~such~~ the reports;

(6) it authorizes the state agency, in its discretion, to terminate the plan in its entirety if it finds that there has been a failure to comply substantially with any





provision contained in the plan~~,--such~~. The termination is to take effect at the expiration of ~~such~~ any notice and on ~~such~~ conditions as may be provided by regulations of the state agency and may be consistent with the provisions of the Social Security Act."

**Section 37.** Section 19-1-823, MCA, is amended to read:

"**19-1-823. Certification by governor.** If the majority of votes cast in the referendum indicates that the majority of voters desire it, the governor shall certify to the secretary of health~~,--education,--and--welfare~~ and human services that the conditions set forth in section 218 of the Social Security Act have been complied with in respect to the retirement system voting in the referendum."

**Section 38.** Section 19-12-202, MCA, is amended to read:

"**19-12-202. Reports of board.** (1) The board shall, not later than November 1 of each year, make a report to the governor covering the operations and proceedings for the prior fiscal year relative to its administration of the Volunteer Firefighters' Compensation Act and the volunteer firefighters' pension plan~~,--with--such~~. The report may include suggestions or recommendations ~~as--it--may--consider~~ that the board considers of value for public information.

(2) Copies of ~~all such~~ the reports ~~shall~~ must be made available by the board to the chief or other representative of any volunteer fire company or companies ~~which may at any~~

time that request them.

~~(3)--By-January-10,-1993,-the-board-shall-provide-to-the-53rd-legislature-a-report-on-the-funding--available--in--the-volunteer-firefighters'-fund-for-benefits-provided-under-the-Volunteer--Firefighters'--Compensation--Act.-The-legislature-shall-review-the-sufficiency-of--the--fund--to--provide--the-current--level--of--benefits--and--may-eliminate,-modify,-or-continue-the-benefit-levels-provided-in-19-12-404."~~

**Section 39.** Section 20-9-213, MCA, is amended to read:

20-9-213. Duties of trustees. The trustees of each district ~~shall~~ have the sole power and authority to transact all fiscal business and execute all contracts in the name of the district. No person other than the trustees acting as a governing board may expend money of the district. In conducting the fiscal business of the district, the trustees shall:

(1) cause the keeping of an accurate, detailed accounting of all receipts and expenditures of school money for each fund maintained by the district in accordance with generally accepted accounting principles and the rules prescribed by the superintendent of public instruction. The record of the accounting must be open to public inspection at any meeting of the trustees.

(2) authorize all expenditures of district money and cause warrants to be issued for the payment of lawful





obligations;

(3) issue warrants on any budgeted fund in anticipation of budgeted ~~revenues~~ revenue, except that the expenditures may not exceed the amount budgeted for the fund;

(4) invest any money of the district, whenever in the judgment of the trustees the investment would be advantageous to the district, by directing the county treasurer to invest any money of the district in direct obligations of the United States government; in savings or time deposits in a state or national bank, building or loan association, savings and loan association, or credit union insured by the FDIC, ~~FSLIC,~~ or NCUA located in the state; or in a repurchase agreement, as authorized in 7-6-213. All interest collected on the deposits or investments must be credited to the fund from which the money was withdrawn, except that interest earned on account of the investment of money realized from the sale of bonds must be credited to the debt service fund or the building fund, at the discretion of the board of trustees. The placement of the investment by the county treasurer is not subject to ratable distribution laws and must be done in accordance with the directive from the board of trustees. A district may invest money under the state unified investment program established in Title 17, chapter 6.

(5) cause the district to record ~~every~~ each transaction

in the appropriate account before the accounts are closed at the end of the fiscal year in order to properly report the receipt, use, and disposition of all money and property for which the district is accountable;

(6) report annually to the county superintendent, not later than August 1, the financial activities of each fund maintained by the district during the last completed school fiscal year, on the forms prescribed and furnished by the superintendent of public instruction. Annual fiscal reports for joint school districts must be submitted to the county superintendent of each county in which part of the joint district is situated.

(7) whenever requested, report any other fiscal activities to the county superintendent, superintendent of public instruction, or board of public education;

(8) cause the accounting records of the district to be audited, as required by 2-7-503; and

(9) perform, in the manner permitted by law, other fiscal duties that are in the best interests of the district."

**Section 40.** Section 20-10-146, MCA, is amended to read:

**"20-10-146. County transportation reimbursement.** (1) The apportionment of the county transportation reimbursement by the county superintendent for school bus transportation or individual transportation that is actually rendered by a





district in accordance with this title, board of public education transportation policy, and the transportation rules of the superintendent of public instruction must be the same as the state transportation reimbursement payment, except that:

(a) if any cash was used to reduce the budgeted county transportation reimbursement under the provisions of 20-10-144(2)(b), the annual apportionment is limited to the budget amount; and

(b) when the county transportation reimbursement for a school bus has been prorated between two or more counties because the school bus is conveying pupils of more than one district located in the counties, the apportionment of the county transportation reimbursement must be adjusted to pay the amount computed under the proration.

(2) The county transportation net levy requirement for the financing of the county transportation fund reimbursements to districts is computed by:

(a) totaling the net requirement for all districts of the county, including reimbursements to a special education cooperative or prorated reimbursements to joint districts;

(b) determining the sum of the money available to reduce the county transportation net levy requirement by adding:

(i) anticipated money that may be realized in the

county transportation fund during the ensuing school fiscal year, including anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204;

(ii) net proceeds taxes and local government severance taxes on other oil and gas production occurring after December 31, 1988;

(iii) coal gross proceeds taxes under 15-23-703;

(iv) any fund balance available for reappropriation from the end-of-the-year fund balance in the county transportation fund. The county transportation fund operating reserve may not be more than 35% of the final county transportation fund budget for the ensuing school fiscal year and must be used for the purpose of paying transportation fund warrants under the county transportation fund budget.

(v) federal forest reserve funds allocated under the provisions of 17-3-213; and

(vi) other revenue anticipated that may be realized in the county transportation fund during the ensuing school fiscal year; and

(c) ~~notwithstanding--the--provisions-of-subsection-(3)~~ subtracting the money available as determined in subsection (2)(b) to reduce the levy requirement from the county transportation net levy requirement.





(3) The net levy requirement determined in subsection (2)(c) must be reported to the county commissioners on the second Monday of August by the county superintendent, and a levy must be set by the county commissioners in accordance with 20-9-142.

(4) The county superintendent shall apportion the county transportation reimbursement from the proceeds of the county transportation fund. The county superintendent shall order the county treasurer to make the apportionments in accordance with 20-9-212(2) and after the receipt of the semiannual state transportation reimbursement payments."

**Section 41.** Section 23-2-716, MCA, is amended to read:

"**23-2-716. Penalty and interest for delinquency -- waiver.** (1) Assessments due under this chapter are delinquent if not paid on or before December 31. The department of revenue commerce shall add to the amount of each delinquent assessment a penalty of 10% of the amount of the assessment plus interest at the rate of 1% per month or fraction of a month, computed on the total amount of assessment. Interest is computed from the date the assessment was due to the date of payment.

(2) The 10% penalty may be waived by the department of revenue commerce if reasonable cause is established for the failure or neglect to file the return required by 23-2-715 or to pay the assessment due to the department of revenue

commerce."

**Section 42.** Section 23-2-717, MCA, is amended to read:

"**23-2-717. Credit for overpayment -- interest on overpayment.** (1) If the department of ~~revenue~~ commerce determines that the amount of the assessment, penalty, or interest paid for any year is more than the amount due, the amount of the overpayment must be credited against any assessment, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer, to the taxpayer's successor through reorganization, merger, or consolidation, or to the taxpayer's shareholders upon dissolution.

(2) Except as provided in subsection (3), interest is allowed on overpayments at the same rate as is ~~charged on deficiency assessments~~ provided in ~~23-2-715(2)~~ 23-2-716(2) from the due date of the return or from the date of overpayment, whichever is later, to the date the department of ~~revenue~~ commerce approves refunding or crediting of the overpayment.

(3) (a) Interest does not accrue during any period in which the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department of ~~revenue~~ commerce for the purpose of verifying the amount of the overpayment.

(b) Interest is not allowed:

(i) if the overpayment is refunded within 6 months from





the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1.

(c) Only a payment made incident to a bona fide and orderly discharge of actual tax liability or one reasonably assumed to be imposed by this chapter is considered an overpayment with respect to which interest is allowable."

**Section 43.** Section 23-2-718, MCA, is amended to read:

"**23-2-718. Statute of limitations.** (1) Except as provided in subsection (3), a deficiency may not be assessed or collected with respect to the year for which a statement of gross receipts is filed unless the notice of the proposed additional assessment is mailed within 5 years from the date the statement of gross receipts was filed. For purposes of this section, a statement of gross receipts filed before the last day prescribed for filing is considered as filed on the last day. If the taxpayer, before the expiration of the period prescribed for assessment, consents in writing to an extended time, the assessment may be made at any time prior to the expiration of the period agreed upon.

(2) A refund or credit may not be allowed or paid with respect to the year for which a statement of gross receipts is filed after 5 years from the last day prescribed for filing the statement of gross receipts or after 1 year from the date of the overpayment, whichever period expires later,

unless before the expiration of the period the taxpayer files a claim or the department of ~~revenue~~ commerce determines the existence of the overpayment and approves the refund or credit. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department of ~~revenue~~ commerce may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed if no claim is filed is automatically extended.

(3) If a statement of gross receipts is required to be filed and the taxpayer fails to file the statement of gross receipts, the tax may be assessed or an action to collect the tax may be brought at any time. If a statement of gross receipts is required to be filed and the taxpayer files a fraudulent statement of gross receipts, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department of ~~revenue~~ commerce."

**Section 44.** Section 25-34-102, MCA, is amended to read:

"**25-34-102. Jurisdiction -- joinder -- interpleader.** (1) The small claims court has original jurisdiction in all actions for the recovery of money or specific personal property when ~~such~~ the action arises out of a contract, express or implied, the amount of the claim, exclusive of costs, does not exceed ~~$2,500~~ $3,000, and the defendant can





be served within the county or counties for which the small claims court has been created.

(2) More than one claim may be joined if all claims joined would separately meet the requirements for jurisdiction in the small claims court and if the total value of money claimed or property sought does not exceed ~~$2,500~~ $3,000.

(3) The small claims court has jurisdiction over an interpleader under 25-34-106 in which the amount claimed does not exceed ~~$2,500~~ $3,000."

**Section 45.** Section 25-35-502, MCA, is amended to read:

"**25-35-502. Jurisdiction.** (1) The small claims court has jurisdiction over all actions for the recovery of money or specific personal property when the amount claimed does not exceed ~~$2,500~~ $3,000, exclusive of costs, and the defendant can be served within the county where the action is commenced.

(2) The small claims court has jurisdiction over an interpleader under 25-35-508 in which the amount claimed does not exceed ~~$2,500~~ $3,000."

**Section 46.** Section 25-35-503, MCA, is amended to read:

"**25-35-503. Removal from district court.** A district court judge may require any action filed in district court to be removed to the small claims court if the amount in controversy does not exceed ~~$2,500~~ $3,000. The small claims

court shall hear any action so removed from the district court."

**Section 47.** Section 27-1-717, MCA, is amended to read:

"27-1-717. Issuing a bad check or stopping payment -- civil liability. (1) A person who issues a check, draft, or an order for the payment of money is liable for damages in a civil action, as provided in subsection (2), to the person to whom the check, draft, or order is issued if the check, draft, or order is:

(a) dishonored for lack of funds or credit or because the issuer has no account with the drawee; or

(b) issued in partial or complete fulfillment of a valid and legally binding obligation and the issuer stops payment with the intent to fraudulently defeat a possessory lien or otherwise defraud the payee of the check.

(2) The amount of damages awarded pursuant to subsection (1) ~~shall~~ must be an amount equal to the greater of $100 or three times the amount for which the check, draft, or order was issued. However, damages may not exceed the value of the check, draft, or order by more than $500.

(3) The remedy provided by this section is available only if:

(a) the person to whom the check, draft, or order was issued has made written demand, mailed to the ~~last-known~~ last-known address or the address shown on the check, to the





drawer for payment of the amount of ~~such~~ the check, draft, or order not less than 10 days before commencing the action; and

(b) the issuer has failed to tender an amount of money equal to the amount demanded prior to the commencement of the action.

(4) The remedy provided by this section:

(a) may be pursued notwithstanding the provisions of 27-1-312;

(b) may be pursued whether or not a criminal penalty is sought under 45-6-316 or any other statute providing a criminal penalty; and

(c) does not affect the obligation of the drawer provided for in ~~30-3-422~~ 30-3-423 to pay the amount of the draft. However, in case of any inconsistency with the provisions of Title 30, chapter 3, the provisions of this section apply."

**Section 48.** Section 27-25-102, MCA, is amended to read:

"27-25-102. When and by whom granted. A writ of review may be granted by:

(1) the supreme court and any justice of the supreme court, in proceedings for contempt in the district court; or

(2) the supreme court or the district court or any judge ~~thereof~~ of those courts, when ~~an inferior~~ a lower tribunal, board, or officer exercising judicial functions

has exceeded the jurisdiction of ~~such~~ the tribunal, board, or officer and there is no appeal or, in the judgment of the court, any plain, speedy, and adequate remedy."

**Section 49.** Section 27-25-203, MCA, is amended to read:

"**27-25-203. Stay of proceedings.** If a stay of proceedings ~~be~~ is not intended, the words requiring the stay must be omitted from the writ. These words may be inserted or omitted, in the sound discretion of the court or judge~~,~~ ~~but~~. However, if the words are omitted, the power of the ~~inferior~~ lower tribunal, board, or officer is not suspended ~~or~~ and the proceedings are not stayed."

**Section 50.** Section 27-26-102, MCA, is amended to read:

"**27-26-102. When and by whom issued.** (1) ~~It~~ A writ of mandamus may be issued by the supreme court or the district court or any judge of the district court to any ~~inferior~~ lower tribunal, corporation, board, or person to compel the performance of an act ~~which~~ that the law specially enjoins as a duty resulting from an office, trust, or station or to compel the admission of a party to the use and enjoyment of a right or office to which ~~he~~ the party is entitled and from which ~~he~~ the party is unlawfully precluded by ~~such--inferior~~ the lower tribunal, corporation, board, or person.

(2) The writ must be issued in all cases ~~where~~ in which there is not a plain, speedy, and adequate remedy in the ordinary course of law."





**Section 51.** Section 27-26-206, MCA, is amended to read:

"**27-26-206. Enforcement of writ -- penalty.** When a peremptory mandate has been issued and directed to any ~~inferior~~ lower tribunal, corporation, board, or person, if it appear to the court or judge that any member of ~~such~~ the tribunal, corporation, ~~or~~ board, or person upon whom the writ has been personally served has, without just excuse, refused or neglected to obey the ~~same~~ writ, the court may, upon motion, impose a fine not exceeding $1,000. In case of persistence in a refusal of obedience, the court may order the party to be imprisoned until the writ is obeyed and may make any orders necessary and proper for the complete enforcement of the writ."

**Section 52.** Section 27-27-102, MCA, is amended to read:

"**27-27-102. Issuance of writ.** ~~The--same~~ A writ of prohibition may be issued by the supreme court or the district court or any district judge to any ~~inferior~~ lower tribunal or to a corporation, board, or person in all cases ~~where~~ in which there is not a plain, speedy, and adequate remedy in the ordinary course of law. ~~It~~ The writ is issued upon an affidavit on the application of the person beneficially interested."

**Section 53.** Section 30-3-415, MCA, is amended to read:

"**30-3-415. Instruments signed for accommodation.** (1) If an instrument is issued for value given for the benefit of a

party to the instrument ("accommodated party") and another ~~part~~ party to the instrument ("accommodation party") signs the instrument for the purpose of incurring liability on the instrument without being a direct beneficiary of the value given for the instrument, the instrument is signed by the accommodation party "for accommodation".

(2) An accommodation party may sign the instrument as maker, drawer, acceptor, or indorser and, subject to subsection (4), is obliged to pay the instrument in the capacity in which the accommodation party signs. The obligation of an accommodation party may be enforced notwithstanding any statute of frauds and regardless of whether the accommodation party receives consideration for the accommodation.

(3) A person signing an instrument is presumed to be an accommodation party and there is notice that the instrument is signed for accommodation if the signature is an anomalous indorsement or is accompanied by words indicating that the signer is acting as surety or guarantor with respect to the obligation of another party to the instrument. Except as provided in 30-3-607, the obligation of an accommodation party to pay the instrument is not affected by the fact that the person enforcing the obligation had notice when the instrument was taken by that person that the accommodation party signed the instrument for accommodation.





(4) If the signature of a party to an instrument is accompanied by words indicating unambiguously that the party is guaranteeing collection rather than payment of the obligation of another party to the instrument, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce the instrument only if:

(a) execution of judgment against the other party has been returned unsatisfied;

(b) the other party is insolvent or in an insolvency proceeding;

(c) the other party cannot be served with process; or

(d) it is otherwise apparent that payment cannot be obtained from the party whose obligation is guaranteed.

(5) An accommodation party that pays the instrument is entitled to reimbursement from the accommodated party and is entitled to enforce the instrument against the accommodated party. An accommodated party that pays the instrument has no right of recourse against, and is not entitled to contribution from, an accommodation party."

**Section 54.** Section 32-2-406, MCA, is amended to read:

"**32-2-406. Investments.** (1) A building and loan association may invest the money of the association in:

(a) the bonds and securities of the United States, bonds and other obligations guaranteed as to interest and principal by the United States, and the stocks, bonds,

debentures, and other securities and obligations of any federal home loan bank created under the laws of the United States, either directly or in the form of securities of or other interests in an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as amended, if:

(i) the portfolio of the investment company or investment trust is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations; and

(ii) the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian;

(b) the bonds and warrants of any state and of any county, city, or school district of the state of Montana;

(c) the obligations of the federal ~~savings--and--loan~~ deposit insurance corporation lawfully issued pursuant to Title IV of the National Housing Act;

(d) improved real estate that has been sold under contract, including suburban homes or farm lands but not including mining property. However, the total amount remaining invested in real estate, excluding real estate otherwise acquired, may not exceed 15% of its assets. The amount invested in real estate may not exceed 85% of the





price stipulated in the contract of sale or 85% of the value of the property purchased, whichever is the lesser.

(e) other bonds, securities, and investments, not to exceed 10% of the association assets.

(2) Not over 10% of the assets of an association may be invested in home office buildings, furniture, and fixtures. Other real property acquired in any manner or for any purpose may not be held for more than 5 years, except by permission of the department.

(3) Notwithstanding other provisions of the law, it is lawful for a building and loan association or other financial institution operating under the laws of this state to invest the funds or money in its custody or possession, eligible for investment, in debentures issued by the federal housing administrator and in obligations of national mortgage associations."

**Section 55.** Section 33-2-827, MCA, is amended to read:

"**33-2-827. Savings and loan.** To the extent that ~~such~~ an account is insured by the federal ~~savings-and--loan~~ deposit insurance corporation, an insurer may invest in share or savings accounts of savings and loan and building and loan associations."

**Section 56.** Section 33-11-105, MCA, is amended to read:

"**33-11-105. Compulsory associations.** (1) A risk retention group may not join or contribute financially to

any insurance insolvency guaranty fund or similar mechanism in this state. In addition, a risk retention group or its insureds may not receive any benefit from any ~~such~~ guaranty fund for claims arising out of the operations of the risk retention group.

(2) A risk retention group shall participate in this state's joint underwriting associations, mandatory liability pools, and similar mechanisms ~~as--provided--by-Title-33,-chapter-8-(now-terminated)~~."

**Section 57.** Section 35-2-906, MCA, is amended to read:

"**35-2-906. Corporate records.** (1) A corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or directors without a meeting, and a record of all actions taken by committees of the board of directors as authorized by 35-2-433(4).

(2) A corporation shall maintain appropriate accounting records.

(3) A corporation or its agent shall maintain a record of its members in a form that permits preparation of a list of the names and addresses of all members, in alphabetical order by class, showing the number of votes each member is entitled to cast.

(4) A corporation shall maintain its records in written form or in another form capable of conversion into written





form within a reasonable time.

(5) A corporation shall keep a copy of the following records at its principal office or a location from which the records may be recovered within 2 business days:

(a) its articles or restated articles of incorporation and all amendments to them currently in effect;

(b) its bylaws or restated bylaws and all amendments to them currently in effect;

(c) resolutions adopted by its board of directors relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members;

(d) the minutes of all meetings of members and the records of all actions approved by the members for the past 3 years;

(e) the financial statements available to ~~shareholders~~ members for the past 3 years under 35-2-911;

(f) a list of the names and business or home addresses of its current directors and officers; and

(g) its most recent annual report delivered to the secretary of state under 35-2-904."

**Section 58.** Section 37-17-304, MCA, is amended to read:

"**37-17-304. Admission of licensees from other states.** A license without written examination may be issued to a psychologist licensed or certified in another state where

the licensing or certification requirements are substantially equivalent to the requirements of this chapter or to a psychologist who is a diplomate in good standing of the American board of professional psychology."

**Section 59.** Section 37-27-103, MCA, is amended to read:

"**37-27-103. Definitions.** As used in this chapter, the following definitions apply:

(1) "Apprentice" means a person who is working under the supervision of a licensed direct-entry midwife and is seeking licensure as a direct-entry midwife under this chapter.

(2) "Board" means the alternative health care board established in 2-15-1840.

(3) "Continuous care" means care provided for one person from the initial history-taking interview through monthly prenatal, intrapartum, and postpartum periods.

~~(4) "Department"---means--the--department--of--commerce provided-for-in-2-15-1001.~~

~~(5)~~ "Direct-entry midwife" means a person who advises, attends, or assists a woman during pregnancy, labor, natural childbirth, or the postpartum period.

~~(6)~~(5) "Licensee" means a person authorized by this chapter to practice direct-entry midwifery.

~~(7)~~(6) "Postpartum period" means the period up to 6 weeks following birth.





~~(8)~~(7) "Practice of direct-entry midwifery" means the advising, attending, or assisting of a woman during pregnancy, labor, natural childbirth, or the postpartum period."

**Section 60.** Section 37-61-202, MCA, is amended to read:

"**37-61-202. Who may be admitted as attorney.** Any citizen or person~~,--resident-of-this-state,~~ who has bona fide declared ~~his-or-her~~ the intention to become a citizen in the manner required by law, who is of good moral character, and who possesses the necessary qualifications of learning and ability is entitled to admission as attorney and counselor in all the courts of this state."

**Section 61.** Section 39-51-406, MCA, is amended to read:

"**39-51-406. Unemployment insurance administration account.** (1) There is ~~hereby--created~~ an account in the federal special revenue fund to be known as the unemployment insurance administration account. All ~~moneys-which-are~~ money that is deposited, appropriated, or paid into this account ~~are--hereby~~ is appropriated and made available to the department. All ~~moneys~~ money in the account ~~shall~~ must be expended solely for the purpose of defraying the costs of administration of this chapter and costs of administration of ~~such~~ other legislation ~~as-shall-be~~ specifically delegated by the legislature to the department for administration ~~by the-legislature~~.

(2) All ~~moneys~~ money received and deposited in ~~said~~ the account ~~for-administration-expense~~ from the United States or any agency ~~thereof~~ of the United States pursuant to section 302, Title III, of the Social Security Act ~~shall~~ must be expended solely for the purpose and in the amounts found necessary by the secretary of labor for the proper and efficient administration of this chapter.

(3) The account ~~shall-consist~~ consists of:

(a) all ~~moneys~~ money received from the United States or any agency ~~thereof~~ of the United States pursuant to section 302, Title III, of the Social Security Act, as amended;

(b) all ~~moneys~~ money appropriated by the state from the general fund for the purpose of administering this chapter; and

(c) all ~~moneys~~ money, trust funds, supplies, facilities, or services furnished, deposited, paid, and received from:

(i) the United States or any agency ~~thereof~~ of the United States;

(ii) this state or any agency ~~thereof~~ of the state;

(iii) any other state or any of its agencies;

(iv) political subdivisions of the state; or

(v) any other source for administrative expense and purpose.

(4) Notwithstanding any provisions of this section, all





money requisitioned and deposited in this account pursuant to 39-51-403 through 39-51-405 ~~shall~~ must remain part of the unemployment insurance fund and ~~shall~~ must be used only in accordance with the conditions specified in 39-51-403 through 39-51-405.

(5) All ~~moneys~~ money in this account ~~shall~~ must be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other accounts. ~~Any~~ The balance in this account ~~shall~~ may not lapse at any time but ~~shall~~ must be continuously available to the department for ~~the~~ expenditure consistent with this chapter.

(6) The state treasurer shall give a separate and additional bond conditioned upon the faithful performance of ~~his~~ the treasurer's duties in connection with the unemployment insurance administration account in an amount to be fixed by the department and in a form prescribed by law or approved by the attorney general. The premiums for ~~such~~ the bond ~~and-the-premiums-for-the--bond--given--by--the treasurer---for---the---unemployment--insurance--fund--under 39-51-402--shall~~ must be paid from the money in the unemployment insurance administration account.

(7) Any reference to the unemployment insurance administration fund in this code ~~shall--be--taken--to--mean~~ means the unemployment insurance administration account in

the federal special revenue fund."

**Section 62.** Section 41-5-306, MCA, is amended to read:

"**41-5-306. Place of shelter care or detention.** (1) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a youth in need of supervision may be placed only:

(a) in a licensed youth foster home as defined in 41-3-1102;

(b) in a facility operated by a licensed child welfare agency;

(c) in a licensed youth group home as defined in 41-3-1102; or

(d) under home arrest, either in ~~his~~ the youth's own home or in one of the facilities described in subsections (1)(a) through (1)(c), as provided in Title 46, chapter 18, part 10.

(2) A youth alleged to be a youth in need of care may be placed only in the facilities listed in subsection (1) and may not be placed in a jail or other facility intended or used for the confinement of adults accused or convicted of criminal offenses.

(3) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a delinquent youth may be placed only in:

(a) the facilities described in subsection (1);





(b) under home arrest as provided in subsection (1);

(c) a short-term detention ~~facility~~ center; or

(d) a youth detention facility."

**Section 63.** Section 46-11-701, MCA, is amended to read:

"**46-11-701. Pretrial proceedings -- exclusion of public and sealing of records.** (1) Except as provided in this section, pretrial proceedings and records of those proceedings are open to the public. If, at the pretrial proceedings, testimony or evidence is presented that is likely to threaten the fairness of a trial, the presiding officer shall advise those present of the danger and shall seek the voluntary cooperation of the news media in delaying dissemination of potentially prejudicial information until the impaneling of the jury or until an earlier time consistent with the administration of justice.

(2) The defendant may move that all or part of the proceeding be closed to the public, or with the consent of the defendant, the judge may take action on the judge's own motion.

(3) The judge may close a preliminary hearing, bail hearing, or any other pretrial proceeding, including a motion to suppress, and may seal the record only if:

(a) the dissemination of information from the pretrial proceeding and its record would create a clear and present danger to the fairness of the trial; and

(b) the prejudicial effect of the information on trial fairness cannot be avoided by any reasonable alternative means.

(4) Whenever all or part of any pretrial proceeding is held in chambers or otherwise closed to the public under this section, a complete record must be kept and made available to the public following the completion of the trial or earlier if consistent with trial fairness.

(5) When the judge determines that all or part of a document filed in support of a charge or warrant would present a clear and present danger to the defendant's right to a fair trial, the document or portion of the document must be sealed until the trial is completed unless the document or portion of the document must be used for trial fairness.

~~(6)--An-affidavit-filed-in-support-of-a-motion-for-leave to--file-a-charge-or-warrant-must-be-sealed-unless-the-judge determines--that--disclosure--of--the--information--in---the affidavit--is--required--to--protect--the-health,-safety,-or welfare-of-the-public."~~

**Section 64.** Section 46-18-101, MCA, is amended to read:

"46-18-101. **Correctional policy.** (1) It is the purpose of this section to declare the correctional policy of the state of Montana. Laws for the punishment of crime and for the rehabilitation of the convicted are drawn to implement





the policy established by this section.

(2) The correctional policy of the state of Montana is to protect society by preventing crime through punishment and rehabilitation of the convicted. The legislature finds that an individual is responsible for and must be held accountable for ~~his~~ the individual's actions. Corrections laws and programs must be implemented to impress upon each individual ~~his~~ the responsibility for obeying the law. To achieve this end, it is the policy of the state to assure that prosecution of criminal offenses occurs whenever probable cause exists and that punishment of the convicted is certain, timely, and consistent. Furthermore, it is the state's policy that persons convicted of a crime ~~shall~~ be dealt with in accordance with their individual characteristics, circumstances, needs, and potentialities.

(3) (a) Sentences imposed upon those convicted of crime must be based primarily on the following:

(i) the crime committed;

(ii) the prospects of rehabilitation of the offender;

(iii) the circumstances under which the crime was committed;

(iv) the criminal history of the offender; and

(v) consideration of alternatives to imprisonment of the offender in the state prison or ~~a~~ the women's correctional ~~facility~~ center.

(b) Dangerous offenders who habitually violate the law and victimize the public ~~shall~~ must be removed from society and correctively treated in custody for long terms, as needed. Other offenders ~~shall~~ must be dealt with by probation, suspended sentence, community corrections, community service, or fine whenever such disposition appears practicable and not detrimental to the needs of public safety and the welfare of the individual. Whenever possible, sentences for offenders ~~shall~~ must include restitution to the victim, payment of costs as provided in 46-18-232, and payment of costs of court-appointed counsel as provided in 46-8-113.

(4) It is also the policy of the state that alternatives to imprisonment, such as community corrections, should be used whenever appropriate for nonviolent felony offenders in order to provide them opportunities to gain work experience, to learn life skills, to obtain education and training, or to participate in other activities that will reduce recidivism and enable offenders to become productive members of society."

**Section 65.** Section 46-18-201, MCA, is amended to read:

"**46-18-201. Sentences that may be imposed.** (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, except as provided in





61-8-714 and 61-8-722 for sentences for driving under the influence of alcohol or drugs, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

(iv) restitution;

(v) payment of the costs of confinement;

(vi) payment of a fine as provided in 46-18-231;

(vii) payment of costs as provided in 46-18-232 and 46-18-233;

(viii) payment of costs of court-appointed counsel as provided in 46-8-113;

(ix) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321;

(x) community service;

(xi) home arrest as provided in Title 46, chapter 18, part 10;

(xii) any other reasonable conditions considered

necessary for rehabilitation or for the protection of society; or

(xiii) any combination of the above.

(b) suspend execution of sentence up to the maximum sentence allowed for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) commit the defendant to a correctional institution, with or without a fine as provided by law for the offense;

(f) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321;

(g) impose any combination of subsections (1)(b) through (1)(f).

(2) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony, regardless of whether any other conditions are imposed.





(3) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit and state its reasons in the order. Credit, however, must be allowed for jail or home arrest time already served.

(4) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

(5) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(6) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(7) If the victim was less than 16 years old, the

imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

(8) In imposing a sentence on a defendant convicted of a sexual offense as defined in 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and Title 46, chapter 23, part 5.

(9) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in the educational phase of the prison's sexual offender program.

(10) In sentencing a nonviolent felony offender, the court shall first consider alternatives to imprisonment of the offender in the state prison, including placement of the offender in a community corrections facility or program. In considering alternatives to imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison or a the women's correctional ~~facility~~ center, the court shall state its reasons why alternatives to imprisonment were not selected, based on the criteria contained in 46-18-225."

**Section 66.** Section 46-18-225, MCA, is amended to read:





"**46-18-225. Criteria for sentencing nonviolent felony offenders.** Prior to sentencing a nonviolent felony offender to a term of imprisonment in the state prison or a the women's correctional ~~facility~~ center, the court shall take into account whether:

(1) the interests of justice and the needs of public safety truly require the level of security provided by imprisonment of the offender in the state prison or a the women's correctional ~~facility~~ center;

(2) the needs of the offender can be better served in the community or in a facility or program other than the state prison or a the women's correctional ~~facility~~ center;

(3) there are substantial grounds tending to excuse or justify the offense, though failing to establish a defense;

(4) the offender acted under strong provocation;

(5) the offender has made restitution or will make restitution to the victim of ~~his~~ the offender's criminal conduct;

(6) the offender has no prior history of conviction for a criminal act or has led a law-abiding life for a substantial period of time before the commission of the present crime;

(7) the offender's criminal conduct was the result of circumstances that are unlikely to recur;

(8) the character and attitude of the offender indicate

that ~~he~~ the offender is likely to commit another crime;

(9) the offender is likely to respond quickly to correctional or rehabilitative treatment; and

(10) imprisonment of the offender would create an excessive hardship on the offender or ~~his~~ the offender's family."

**Section 67.** Section 46-18-254, MCA, is amended to read:

"**46-18-254. Release of sexual offender -- duties of court and department.** A sexual offender must be informed in writing at the time of sentencing of ~~his~~ the duty to register under 46-18-255; Title 46, chapter 23, part 5; and this section by the court in which ~~he~~ the offender is sentenced. The department of corrections and human services shall obtain the address where the person expects to reside upon release or discharge or suspension of ~~his~~ the person's sentence. The department of corrections and human services shall inform the appropriate law enforcement agency having local jurisdiction where the person expects to reside."

**Section 68.** Section 46-23-201, MCA, is amended to read:

"**46-23-201. Prisoners eligible for nonmedical parole.** (1) Subject to the restrictions contained in subsections (2) through (5), the board may release on nonmedical parole by appropriate order any person confined in the Montana state prison or the women's ~~correction~~ correctional center, except persons under sentence of death and persons serving





sentences imposed under 46-18-202(2), when in its opinion there is reasonable probability that the prisoner can be released without detriment to the prisoner or to the community.

(2) A ~~convict~~ prisoner serving a time sentence may not be paroled under this section until ~~he~~ the prisoner has served at least one-half of ~~his~~ the prisoner's full term, less the good time allowance provided for in 53-30-105~~,~~ ~~except~~. Except as provided in subsection (3), a ~~convict~~ prisoner designated as a nondangerous offender under 46-18-404 may be paroled after ~~he~~ the prisoner has served one-quarter of ~~his~~ the prisoner's full term, less the good time allowance provided for in 53-30-105. Any ~~offender~~ prisoner serving a time sentence may be paroled after ~~he~~ the prisoner has served~~,-upon-his-term-of-sentence,~~ 17 1/2 years of the sentence.

(3) A ~~convict~~ prisoner serving a time sentence under 45-9-109 may not be paroled until ~~he~~ the prisoner has served at least one-half of ~~his~~ the full term, less the good time allowance provided for in 53-30-105.

(4) A ~~convict~~ prisoner serving a life sentence may not be paroled under this section until ~~he~~ the prisoner has served 30 years, less the good time allowance provided for in 53-30-105.

(5) A parole may be ordered under this section only for

the best interests of society and not as an award of clemency or a reduction of sentence or pardon. A prisoner may be placed on parole only when the board believes that he the prisoner is able and willing to fulfill the obligations of a law-abiding citizen.

(6) Whenever the department of corrections and human services certifies to the board that the population at either the male or female correctional facility has exceeded its designed capacity for 30 consecutive days, the board shall consider the respective male or female ~~inmates~~ prisoners under the jurisdiction of the department eligible for parole 120 days prior to the eligibility dates provided for in subsections (2) through (4).

(7) Regardless of length of sentence, if the conditions of parole eligibility are met within the initial 12 months of incarceration ~~at Montana state prison~~, the provisions of subsection (6) do not apply."

**Section 69.** Section 53-3-308, MCA, is amended to read:

"**53-3-308. Responsibility for general relief.** (1) The county boards of public welfare and the department, in accordance with this chapter and other relevant statutes, are responsible for the provision of general relief as follows:

(a) Counties without state-assumed welfare services shall provide general relief consistent with their duties as





specified in Title 53, chapter 2, ~~parts~~ part 3 ~~and 7~~, and this chapter.

(b) In counties with state-assumed welfare services, general relief must be provided by the department and must be consistent with its duties as specified in Title 53, chapter 2, part 8, and this chapter.

(2) In counties without state-assumed welfare services, general relief must be paid from the county poor fund as authorized in 53-2-321 through 53-2-323.

(3) In counties with state-assumed welfare services, general relief must be paid from and may not exceed money available through:

(a) a general appropriation for such purpose;

(b) county mill levies as provided for in 53-2-813; and

(c) federal or other assistance."

**Section 70.** Section 53-19-305, MCA, is amended to read:

"**53-19-305. Power and duties.** The committee shall oversee administration of the program provided for in ~~53-29-306~~ 53-19-306. In fulfilling this duty, the committee shall:

(1) establish policies and procedures governing administration of the program;

(2) analyze and approve a budget for administration of services under the program;

(3) monitor the expenditure of funds for the program;

(4) provide for administration of eligibility and the delivery of services for the program as provided for in 53-19-306 through 53-19-309; and

(5) perform any other duties necessary to properly oversee administration of the program."

**Section 71.** Section 53-20-147, MCA, is amended to read:

"**53-20-147. Right not to be subjected to experimental research.** (1) Residents of a residential facility **shall** have a right not to be subjected to experimental research without the express and informed consent of the resident, if the resident is able to give **such** consent, and of ~~his~~ the resident's parents or guardian or the responsible person appointed by the court after opportunities for consultation with independent specialists and with legal counsel.

(2) ~~Such~~ The proposed research ~~shall--first~~ must have been reviewed and approved by the mental disabilities board of visitors before **such** consent **shall** may be sought. Prior to **such** approval, the board shall determine that **such** the research complies with the principles of the statement on the use of human subjects for research of the American association on mental deficiency and with the principles for research involving human subjects required by the United States department of health~~,--education,--and-welfare~~ and human services for projects supported by that agency."

**Section 72.** Section 53-21-147, MCA, is amended to read:





"**53-21-147. Right not to be subjected to experimental research.** (1) Patients **shall** have a right not to be subjected to experimental research without the express and informed consent of the patient, if the patient is able to give **such** consent, and of ~~his~~ the patient's guardian, if any, and the friend of respondent appointed by the court after opportunities for consultation with independent specialists and with legal counsel. If there is no friend of respondent or if the friend of respondent appointed by the court is no longer available, then a friend of respondent who is in no way connected with the facility, the department, or the research project **shall** must be appointed prior to the involvement of the patient in any experimental research. At least 10 days prior to the commencement of **such** experimental research, the facility shall send notice of intent to involve the patient in experimental research to the patient, ~~his~~ the patient's next of kin, if known, ~~his~~ the patient's legal guardian, if any, the attorney who most recently represented ~~him~~ the patient, and the friend of respondent appointed by the court.

(2) ~~Such~~ The proposed research ~~shall--first~~ must have been reviewed and approved by the mental disabilities board of visitors before **such** consent **shall** may be sought. Prior to **such** approval, the board shall determine that **such** the research complies with the principles of the statement on

the use of human subjects for research of the American association on mental deficiency and with the principles for research involving human subjects required by the United States department of health~~,--education,--and--welfare~~ and human services for projects supported by that agency.

(3) A patient has the right to appropriate protection before participating in an experimental treatment, including the right to a reasonable explanation of the procedure to be followed, expected benefits, relative advantages, and the potential risks and discomforts of any experimental treatment. A patient has the right to revoke at any time consent to an experimental treatment."

**Section 73.** Section 61-1-314, MCA, is amended to read:

"**61-1-314. Dealer.** (1) "Dealer" means:

(a) a person, firm, association, or corporation ~~which~~ that, for commission or profit, engages in whole or in part in the business of buying, selling, exchanging, or acting as a broker of either new or used motor vehicles, or both, and who qualifies for issuance of a dealer's license under 61-4-101 through 61-4-105; or

(b) an owner of real property who allows more than three new or used motor vehicles not titled in the property owner's or the seller's name to be offered for sale on the property during 1 calendar year unless the property is leased to a motor vehicle dealer licensed under 61-4-101 and





the vehicles offered for sale are bona fide units of the licensed dealer's inventory.

(2) The term "dealer" does not include the following:

(a) receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under a judgment or order of any court of competent jurisdiction;

(b) employees of the persons included in subsection (2)(a) when engaged in the specific performance of their duties as employees; or

(c) public officers while performing or in the operation of their duties.

~~(3)--A--dealer-dealing-in-used-motor-vehicles-only-shall purchase-a-Montana-store-license.~~"

**Section 74.** Section 61-4-120, MCA, is amended to read:

"**61-4-120. Application for auto auction license -- general regulations.** (1) A person, firm, association, or corporation that takes possession of a motor vehicle owned by another person through consignment, bailment, or any other arrangement for the purpose of selling the motor vehicle to the highest bidder when all buyers are licensed motor vehicle dealers, wholesalers, or wrecking facilities shall file by mail or otherwise in the office of the department a verified application for licensure as an auto auction. The application must be made in the following manner:

(a) Each application and all of the information contained in it must be verified by the ~~Montana--highway patrol~~ department or an authorized representative of the department on a form to be furnished by the department for that purpose. The application must provide the following information:

(i) the name in which the business is to be conducted and the location of premises (street address, city, county, and state) where records are kept, sales are made, and motor vehicle stock is displayed as an established place of business that displays a sign indicating the firm name and that vehicles are offered for sale. The letters on the sign must be clearly visible and readable to the major avenue of traffic at a minimum distance of 150 feet.

(ii) the name and address of all owners or persons having an interest in the business. In the case of a corporation, the names and addresses of the president and secretary are sufficient.

(iii) a statement that the applicant is authorized to auction used motor vehicles, recreational vehicles, trailers, semitrailers, special mobile equipment, motorcycles, and quadricycles under one license. A licensed auto auction may not auction a new motor vehicle except when authorized by a new motor vehicle manufacturer, importer, distributor, or representative thereof, for the purpose of





conducting a closed-factory fleet sale to dispose of new motor vehicles by the franchisor (manufacturer, distributor, or importer) to franchisee purchasers when the purchasers are licensed new motor vehicle dealers purchasing new motor vehicle line-makes authorized by their respective franchise, sales, or distributor agreements. An auto auction licensed under the provisions of this section shall notify and update the department with current fleet sale agreements between the auto auction and franchisor. An auto auction may not conduct a factory fleet sale unless authorized or appointed by a franchisor licensed under part 2 of this chapter.

(b) Each application must be accompanied by a bond of $25,000 and must be conditioned that the applicant shall conduct ~~his~~ business in accordance with the requirements of the law. All bonds must run to the state of Montana, must be approved by the department and filed in its office, and must be renewed annually. A person who suffers loss or damage due to the unlawful conduct of an auto auction licensed under this section may proceed in the same manner as provided for licensed dealers and wholesalers in 61-4-101(3)(b).

(2) An auto auction's license must be renewed and paid for annually to the department, and an application for relicensure must be filed by January 1 of each year. The fee required for each first-time applicant is $500 and for subsequent renewal applications is $100 each year. Upon

receipt of a properly completed application, fee, and bond, the department shall issue the auto auction license and assign an auto auction license number for each applicant in a manner determined by the department. Auto auctions dealing in motor vehicles may sell only to licensed dealers and wholesalers.

(3) Auto auctions that are licensed under this section and that hold a current license number may issue temporary permits, which may be displayed and used by a buyer to operate an unregistered vehicle purchased from the auto auction. The temporary permit is valid for a period of 72 hours from the time of purchase and may be used only for the purpose of driving or transporting a vehicle from the auction premises to the purchaser's established place of business or point of destination. Temporary permits must be on a form prescribed by the department and must contain the name, address, and license number of the purchaser, date of sale, name, address, license number, and authorized signature of the auto auction, and a description of the vehicle, including its serial number. The department shall collect a fee of $10 from the auto auction for each temporary permit, and the auto auction may charge a vehicle purchaser no more than $10 for the issuance of each permit to offset the cost of the ~~permits~~ permit. It is unlawful for the auto auction to issue more than one temporary permit per





vehicle sale.

(4) A licensed auto auction may apply for and may be authorized by the department to purchase and use license plates of a type and amount approved by the department, upon payment of a fee to the department to offset the cost of production. Licensed auto auctions may use the license plates to transport inventory vehicles from a point of storage or a point of delivery in this state to the auto auction's place of business, for road testing authorized vehicles, or for moving vehicles for purposes of repairing, painting, upholstering, polishing, and related activities. One license plate is required to be conspicuously displayed on the rear of the vehicle. Auto auctions may appoint designated persons, partnerships, corporations, service stations, or repair garages to use the license plate only when conducting work for the auto auction involving repairing, painting, upholstering, polishing, or performing of similar types of work upon a vehicle. Upon application for an auto auction license, the applicant, if requesting the license plates, shall submit a sworn affidavit on a form prescribed by the department, listing each authorized person designated by the auction to use the license plates. The auto auction is responsible for reporting any changes to the affidavit within 72 hours after the amendment has occurred. An auto auction licensed under the provisions of this

section is liable for the proper use of the license plates, which may not be used for private purposes. The department may revoke an auto auction's 72-hour temporary permit and license plate privileges if an auction issues, authorizes the use of, or uses a temporary permit or the license plate in violation of the provisions of this section.

(5) (a) Each auto auction shall keep a book or record, in a form and manner subject to approval by the department, of the purchases, sales, or exchanges or the receipts for the purpose of sale of any motor vehicle, a properly completed copy of a temporary permit issued to a vehicle purchaser, the date of title transfer, and a description of the motor vehicle, together with the name and address of the seller, the purchaser, and the alleged owner or other person from whom the motor vehicle was purchased or received or to whom it was sold or delivered. The description in the case of a motor vehicle must include:

(i) the identification number or engine number, if any;

(ii) other numbers or identification marks on the motor vehicle; and

(iii) a statement that a number has been obliterated, defaced, or changed, if it has.

(b) An auto auction licensed under this section shall validate the sale of a motor vehicle through its auction by stamping its name and license number upon the certificate of





ownership at a location on the front or back of the certificate, at the margin in the assignment section as executed between the transferor and transferee. An auto auction's stamp must be legible and may not interfere with the information recorded on the certificate between the transferor and transferee. If the certificate of ownership lacks adequate space for the auto auction to place its stamp, the auction may provide the transferee a copy of the auction invoice bearing the name and license number of the auction, along with an indication of the vehicle year, make, model, and identification number; name, address, and signature of the transferor; name, license number, and signature of the transferee; and the date the vehicle was sold through the auction.

(c) The invoice must be attached to the certificate of ownership and must be presented to the department with any application for title.

(d) An auto auction shall retain, for 5 years, odometer disclosure information, including the name of the owner on the date the auto auction took possession of the motor vehicle, the name of the buyer, the vehicle identification number, and the odometer reading on the date the auto auction took possession of the motor vehicle. The odometer information may be retained in any way that is systematically retrievable and is not required to be

maintained on any special disclosure form. The information may be part of the auction receipt or invoice or be maintained as a portion of a computer data base or manual file. An auto auction that executes a transfer of ownership as an agent, on behalf of a seller or buyer is liable for providing an odometer disclosure statement for the seller or an odometer disclosure acknowledgement for the buyer under the provisions of 61-3-206."

**Section 75.** Section 61-5-117, MCA, is amended to read:

"**61-5-117. Rulemaking authority.** The department ~~of justice~~ may adopt rules to implement the issuance and enforcement of classified commercial vehicle operator's endorsements ~~and hazardous materials endorsements~~."

**Section 76.** Section 75-10-512, MCA, is amended to read:

"**75-10-512. Records required of facilities.** (1) ~~Every~~ Each motor vehicle wrecking facility shall maintain books or files in which are kept a record and description of every junk vehicle obtained by it, together with the name and address of the person from whom the vehicle was purchased.

(2) This record ~~shall~~ must also contain:

(a) the certificate of ownership, sheriff's certificate of sale, notarized bill of sale from the former owner or person selling the vehicle, release of ownership or interest in the motor vehicle, or sheriff's release;

(b) the name of the state where the vehicle was last





registered;

(c) the make of the vehicle;

(d) the vehicle identification number as defined in 61-3-210 or the motor number, ~~or~~ identification number, or serial number;

(e) the date purchased;

(f) the disposition of the vehicle.

(3) An authorized representative of the department of justice who presents ~~his~~ credentials may also inspect, have access to, and copy records required under this section."

**Section 77.** Section 75-10-603, MCA, is amended to read:

"**75-10-603. Cooperative agreement -- authority of department.** (1) In order to assist in implementation of CERCLA, the department may:

(a) participate in the determination of appropriate remedial action to deal with the release or threatened release within Montana of:

(i) any contaminant presenting an imminent and substantial danger to public health or welfare; or

(ii) any hazardous substance;

(b) in the event of the release or threatened release of any of the substances described in subsection (1)(a), negotiate the terms of a cooperative agreement with the federal government containing mutual commitments of each party to remedial action, including the elements required by

subsection (2) ~~of this section~~.

(2) A cooperative agreement ~~must~~ may contain the following assurances:

(a) the state of Montana will assure the future maintenance of the removal and remedial actions agreed upon for the expected life of ~~such~~ the actions;

(b) a hazardous waste disposal facility is available to the state of Montana ~~which~~ that meets the specifications of the president and complies with the requirements of subtitle C of the federal Solid Waste Disposal Act for necessary offsite storage, destruction, treatment, or secure disposition of the hazardous substances; and

(c) the state of Montana will pay or assure payment of a share of the costs of the remedial action, including all future maintenance."

**Section 78.** Section 80-8-102, MCA, is amended to read:

"80-8-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Active ingredient" means:

(a) in the case of a pesticide, other than a plant regulator, defoliant, or desiccant, an ingredient ~~which~~ that will prevent, destroy, repel, alter life processes, or mitigate insects, nematodes, fungi, rodents, weeds, or other pests;

(b) in the case of a plant regulator, an ingredient





~~which~~ that acts upon the physiology to accelerate or retard the rate of growth or rate of maturation or otherwise alter the normal processes of ornamental or crop plants or their produce;

(c) in the case of a defoliant, an ingredient ~~which~~ that will cause the leaves or foliage to drop from a plant;

(d) in the case of a desiccant, an ingredient ~~which~~ that will artificially accelerate the drying of plant tissue.

(2) "Adulterated" applies to a pesticide if its strength of purity falls below the professed standard or quality as expressed on labeling or under which it is sold, ~~or~~ if any substance has been substituted wholly or in part for the pesticide, or if any valuable constituent of the pesticide has been wholly or in part abstracted.

(3) "Antidote" means the most practical immediate treatment in case of poisoning and includes first-aid treatment.

(4) "Applicator" means a person who applies pesticides by any method.

(5) "Beneficial insects" means those insects ~~which~~ that, in the course of their life cycle, carry, transmit, or spread pollen to and from vegetation, act as parasites and predators on other insects, or are otherwise beneficial.

(6) "Commercial applicator" means a person who by

contract or for hire applies by aerial, ground, or hand equipment pesticides to land, plants, seed, animals, waters, structures, or vehicles.

(7) "Commercial operator" means a person who applies pesticides under the supervision of a commercial applicator.

(8) "Crop" means a food intended for human or animal consumption or a fiber product.

(9) "Dealer" means a person who sells, wholesales, offers or exposes for sale, exchanges, barters, or gives away within this state any pesticide except those pesticides ~~which~~ that are to be used for home, yard, garden, home orchard, shade trees, ornamental trees, bushes, and lawn.

(10) "Defoliant" means a substance or mixture of substances for causing the leaves or foliage to drop from a plant, with or without causing abscission.

(11) "Desiccant" means a substance or mixture of substances for artificially accelerating the drying of plant tissue.

(12) "Device" means any instrument or contrivance intended for destroying, controlling, repelling, or mitigating pests ~~but~~. The term does not include equipment used for the application of pesticides.

(13) "Environment" means the soil, air, water, plants, and animals.

(14) "Equipment" means equipment used in the actual





application of pesticides, including aircraft, ground sprayers and dusters, hand-held applicators, and water surface equipment.

(15) "Farm applicator" means a person applying pesticides to ~~his~~ the person's own crops or land.

(16) "Fungi" means all nonchlorophyll-bearing thallophytes (all nonchlorophyll-bearing plants of a lower order than mosses and liverworts), such as~~, for example,~~ rusts, smuts, mildews, molds, yeasts, and bacteria, except those resident on or in living ~~man~~ humans or other animals.

(17) "Fungicide" means a substance or mixture of substances for preventing, destroying, repelling, or mitigating any fungus.

(18) "Herbicide" means a substance or mixture of substances for preventing, destroying, repelling, or mitigating any weed.

(19) "Inert ingredient" means an ingredient ~~which~~ that is not an active ingredient.

(20) "Ingredient statement" means either:

(a) a statement of the chemical name and common name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the pesticide; or

(b) a statement of the chemical name and common name of each active ingredient, together with the name of each and

total percentage of the inert ingredients, if any, in the pesticide. However, subsection (20)(a) ~~of--this--section~~ applies if the preparation is highly toxic to man, determined as provided in 80-8-105; and if the pesticide contains arsenic in any form, the ingredient statement ~~shall~~ must also include a statement of the percentage of total and water-soluble arsenic, each calculated as elemental arsenic.

(21) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, winged and wingless forms, such as beetles, bugs, wasps, flies, and keds, and to other classes of arthropods whose members are wingless and usually have more than six legs, such as spiders, mites, ticks, centipedes, and wood lice.

(22) "Insecticide" means any substance or mixture of substances for preventing, destroying, repelling, or mitigating any insects present in any environment.

(23) "Label" means the written, printed, or graphic matter on or attached to the pesticide or device or to its immediate container and any outside container or wrapper of any retail package of the pesticide or device.

(24) "Labeling" means all labels and other written, printed, or graphic matter:

(a) upon the pesticide or device or any of its





containers or wrappers;

(b) accompanying the pesticide or device at any time;

(c) to which reference is made on the label or in literature accompanying the pesticide or device, except when accurate, nonmisleading reference is made to current official publications of the United States environmental protection agency; departments of agriculture, interior, or health~~,--education,--and--welfare~~ and human services; state experiment stations; state agricultural colleges; or other similar federal institutions or official agencies of this state or other states authorized by law to conduct research in the field of pesticides.

(25) "Misbranded" applies:

(a) to a pesticide or device if its labeling bears any statement, design, or graphic representation relative to its ingredients ~~which~~ that is false or misleading;

(b) to a pesticide if:

(i) it is an imitation of or is offered for sale under the name of another pesticide;

(ii) its labeling bears any reference to registration under this chapter;

(iii) the labeling accompanying it does not contain instructions for use necessary and, if complied with, adequate for the protection of the public;

(iv) the label does not contain a warning or caution

statement necessary and, if complied with, adequate to prevent injury to living ~~man~~ humans or undue hazard to the environment;

(v) the label of the retail package ~~which~~ that is presented or displayed under customary conditions of purchase does not bear an ingredient statement on that part of the immediate container and on the outside or on a wrapper through which the ingredient statement on the immediate container cannot be clearly read;

(vi) any word, statement, or other information required to appear on the labeling is not prominently placed on the labeling with a conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in terms rendering it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(vii) in the case of an insecticide, nematocide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized practice, it is injurious to living ~~men~~ humans or other vertebrate animals or vegetation, except weeds, to which it is applied or to the person applying the pesticide;

(viii) in the case of a plant regulator, defoliant, or desiccant, when used as directed, it is injurious to ~~man~~ humans or other vertebrate animals or vegetation to which it





is applied or to the person applying the pesticide. Physical or physiological effects on plants or parts of plants are not injurious when this is the purpose for which the plant regulator, defoliant, or desiccant is applied in accordance with the label claims and recommendations.

(26) "Nematocide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating nematodes.

(27) "Nematodes", "nemas", or "eelworms" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or sac-like bodies covered with cuticle and inhabiting soil, water, animals, plants, or plant parts.

(28) "Person" means any natural person, individual, firm, partnership, association, corporation, company, joint-stock association, body politic, or organized group of persons, whether incorporated or not, and any trustee, receiver, assignee, or similar representative.

(29) "Pest" includes any insect, rodent, nematode, snail, slug, weed, and any form of plant or animal life or virus, except a virus on or in living ~~man~~ humans or other ~~animal~~ animals, ~~which~~ that is normally considered a pest or ~~which~~ that the department declares a pest.

(30) "Pesticide" means any:

(a) substance or mixture of substances, including any

living organism or any product derived from a living organism, intended for preventing, destroying, controlling, repelling, altering life processes, or mitigating any insects, rodents, nematodes, fungi, weeds, and other forms of plant or animal life or viruses, except viruses on or in living ~~man~~ humans or other animals, that may infect or be detrimental to persons, vegetation, crops, animals, structures, or households or be present in any environment or ~~which~~ that the department declares a pest;

(b) substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and

(c) other substances intended for that use named by the department by a rule adopted by it.

(31) "Plant regulator" means any substance or mixture of substances affecting the rate of growth or rate of maturation or for otherwise altering physiological condition of plants ~~but~~. The term does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

(32) "Public utility applicator" means a person applying pesticides to land and structures owned or leased by a public utility.

(33) "Registrant" means the person registering any pesticide or device under the provisions of this chapter.





(34) "Restricted-use pesticide" means any pesticide, including highly toxic pesticides, ~~which~~ that the department has found and determined, subsequent to a hearing, to be injurious, when used in accordance with registration, label, directions, and cautions, to persons, beneficial insects, animals, crops, or the environment other than the pests it is intended to prevent, destroy, control, or mitigate.

(35) "Retailer" means any person who sells, offers or exposes for sale, exchanges, barters, or gives away within this state any pesticide for home, yard, lawn, and garden use, in quantities or concentrations as determined by the department of agriculture.

(36) "Waste pesticide" means a pesticide:

(a) that may not be used legally because the environmental protection agency or the department has canceled or suspended the pesticide's registration or has taken other administrative action to prohibit use of the pesticide;

(b) that will not be used for reasons including but not limited to product damage, toxicity, or obsolescence; or

(c) that cannot be disposed of in a legal or economically feasible manner.

(37) "Weed" means any plant or part of the plant ~~which~~ that grows where not wanted."

**Section 79.** Section 81-22-101, MCA, is amended to read:

**"81-22-101. Definitions.** For the purpose of this chapter, the following definitions are adopted:

(1) "Agent" means a person who is authorized by another person to act for ~~him~~ that other person in dealing with a third person.

(2) "Butter" is the clean, nonrancid product made by gathering the fat of fresh ripened milk or cream into a mass ~~which~~ that also contains a small portion of the other milk constituents, with or without salt, and must contain not less than 80% of milk fat. No tolerance for deficiency in milk fat is permitted. Butter may also contain added coloring matter.

(3) "Cheese" is the sound, solid, and ripened product made from milk or cream by coagulating the casein with rennet or lactic acid, with or without ripening ferments and seasoning, and must contain in the water-free substance not less than 50% of milk fat and not more than 39% of moisture. Cheese may also contain added coloring matter.

(4) "Cheese factory" means a place where cheese, including cream cheese, cottage cheese, creamed cottage cheese, cheese curd, cottage cheese dressing, and low-fat counterparts of cheese, either cultured or directly acidified, is made for commercial purposes.

(5) "C.I.P." means the procedure by which sanitary pipelines or pieces of dairy equipment are mechanically





cleaned in place by circulation when this procedure meets the 3-A accepted practices for permanently installed sanitary product-pipelines and cleaning systems.

(6) "Code of Federal Regulations" refers especially but is not limited to Title 21, which contains the definitions and standards of identity for products as established by the food and drug administration, United States department of health~~, education, and welfare~~ and human services.

(7) "Cream" means the milk fat ~~which~~ that rises to the surface when milk is allowed to stand or ~~which~~ that is separated from milk by centrifugal force when sold, used, or intended for use in a manufactured product.

(8) "Creamery" means a place where butter is made for commercial purposes.

(9) "Culture" means the harmless lactic acid fermenting bacteria ~~which~~ that are added to milk or cream to make manufactured dairy products like cultured buttermilk, cheese, cottage cheese, yogurt, sour cream, cream cheese, butter, and ~~other~~ similar products.

(10) "Dairy" or "dairy farm" means a place where one or more cows or goats are kept, a part or all of the milk or cream from which is used for manufacturing purposes.

(11) The term "department", unless otherwise indicated, means the department of livestock provided for in Title 2, chapter 15, part 31.

(12) "Direct acidification", "directly acidified", and similar terms mean the process of adding a food grade acid to milk or cream instead of or in addition to the adding of culture.

(13) "Filled dairy products" means milk, cream, skimmed milk, or any combination of these, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, or any food product made or manufactured from them, to which has been added or which has been blended or compounded with fat or oil other than milk fat so that the resulting product is in imitation or semblance of a dairy product, including milk, cream, sour cream, skimmed milk, ice cream, low-fat ice cream, whipped cream, flavored milk or skim milk yogurt, dried or powdered milk, cheese, cream, cream cheese, cottage cheese, creamed cottage cheese, ice cream mix, low-fat ice cream mix, sherbet, condensed milk, evaporated milk, or concentrated milk.

(14) "French ice cream", "French custard ice cream", "cooked ice cream", "ice custard", "parfaits", and similar frozen products, except sherbets and water ices, are varieties of ice cream.

(15) "Frozen dessert plant" means a place where products named in subsections (27)(a)(iii) through (27)(a)(ix) ~~of this section~~ are made for commercial purposes.

(16) "Fruit ice cream" ~~shall~~ must conform to the





requirements of ice cream, except that the fruit ingredients must be from sound, clean, and mature fruit, and it must contain not less than 9% of milk fat.

(17) "Grading" means the examination of milk, cream, or products by sight, odor, taste, or laboratory analysis, the results of which determine a grade designating their quality.

(18) "Ice" or "ice sherbet" is the pure, clean, frozen product made from water and sugar with harmless fruit or fruit juice flavoring, with or without harmless coloring or added stabilizer composed of wholesome edible material, and must contain not less than 35/100 of 1% of acid, as determined by titrating with standard alkali and expressed as lactic acid. It may not contain ~~no~~ milk solids.

(19) "Ice cream" is a frozen product made with pure, sweet milk, cream, skim milk, evaporated or condensed milk, evaporated or condensed skim milk, dry milk, dry skim milk, pure milk fat, wholesome sweet butter, or any combination of these products, with or without sweetening, or clean wholesome eggs or egg products, with or without the use of harmless flavoring and coloring. Ice cream must contain not less than 10% of milk fat, not less than 33% total solids, and may or may not contain pure and harmless edible stabilizer. Ice cream may contain not to exceed 1% gelatin. ~~No~~ A frozen milk or milk product may not be manufactured or

sold unless it contains at least 10% butterfat, excepting sherbets, ices, and other exceptions under this section. All ice cream must be manufactured from pasteurized ice cream mix.

(20) An "ice cream factory" is a place where ice cream mix is frozen into ice cream for commercial purposes.

(21) (a) "Ice cream mix" is a pasteurized, unfrozen product used in the manufacture of ice cream and must comply with the requirements for ice cream.

(b) "Mix" includes the liquid, unfrozen product from which those frozen products listed under subsection (27)(a)(iii) through (27)(a)(v) and (27)(a)(vii) through (27)(a)(xii) are made.

(22) An "ice cream mix factory" is a place where ice cream mix is made.

(23) "Intrastate commerce" means commerce within this state under the jurisdiction of the state and includes the operation of a business or service establishment.

(24) "Manufactured dairy product" means an item enumerated in subsection (27) or any other dairy product made by incorporating milk or cream or converting milk or cream into a different state of appearance or quality. For purposes of reporting production and licensing, "manufactured dairy product" includes but is not limited to:

(a) ice cream or its mix;





(b) French ice cream, custard ice cream, French custard ice cream, their low-fat counterparts, or their mixes;

(c) sherbets of all kinds or their mixes;

(d) animal or vegetable fat frozen desserts or their mixes;

(e) frozen confections or their mixes when made in a manufactured dairy products plant;

(f) water ices or their mixes;

(g) frozen dessert sandwiches, bars, cones, and similar novelties;

(h) frozen dessert made of nondairy origins and other products made in the semblance or imitation of dairy products or their mixes when made in a manufactured dairy products plant;

(i) ice milk or its mix;

(j) cheese of all kinds, including cottage cheese, cheese curd, cheese dressing, and cream cheese, either cultured or directly acidified;

(k) sour cream when cultured or directly acidified;

(l) eggnog, low-fat eggnog, eggnog-flavored milk, and similar flavored products;

(m) buttermilk, cultured or from churned butter or directly acidified;

(n) butter;

(o) yogurt, low-fat yogurt, or flavored yogurt, either

cultured or directly acidified or frozen.

(25) "Manufactured dairy products plant" or "factory" means a place where milk or cream is collected and converted into a product or into a different state of appearance or quality or ~~which~~ that manufactures those products listed in subsection (27). If only products of semblance or imitation of dairy products are made, the plant is not considered ~~as~~ a manufactured dairy products plant.

(26) "Milk" means the lacteal secretion, practically free from colostrum, obtained by the milking of one or more healthy cows located in modified accredited areas and modified certified areas or from cows in herds fully accredited as ~~tuberculosis--free~~ tuberculosis-free by the United States department of agriculture or in the process of being accredited, when the milk or cream is sold for use in, intended for use in, or used in a manufactured dairy product.

(27) (a) "Milk" and "cream" mean milk and cream sold, used, or intended for manufacturing purposes or for conversion into products of a form other than the form in which originally produced or products commonly known as but not limited to:

(i) butter;

(ii) cheese, including cottage cheese, low-fat cottage cheese, cheese curd, and cream cheese, which are either





cultured or directly acidified, and cheese dressings;

(iii) ice cream or its mix;

(iv) frozen dessert or its mix;

(v) sherbets of all kinds or their mixes;

(vi) frozen ice cream bars, sandwiches, cones, and similar novelties;

(vii) frozen desserts or products made in the semblance or imitation of frozen dessert;

(viii) frozen confections or their mixes;

(ix) water ices or their mixes;

(x) ice milk or its mix;

(xi) French ice cream, French custard, or their mixes;

(xii) frozen custard or its mix and frozen yogurt;

(xiii) yogurt, flavored yogurt, and low-fat yogurt;

(xiv) sour cream, either cultured or directly acidified;

(xv) cream cheese, either cultured or directly acidified;

(xvi) buttermilk, either cultured, from churned butter, or directly acidified;

(xvii) eggnog, low-fat eggnog, eggnog-flavored milk, whipped cream, flavored toppings, and similar flavored products;

(xviii) dry or powdered milk; and

(xix) condensed milk products.

(b) The items specified in subsection (27)(a) ~~of this~~

section shall must conform to the standards of identity set forth in the Code of Federal Regulations. If standards of identity are not set forth in the code, then the standards adopted by the department prevail. The labeling of manufactured dairy products shall must be in accordance with the Montana Food, Drug, and Cosmetic Act.

(28) "Milk or cream station" means a place other than a creamery where deliveries of milk or cream are weighed, graded, sampled, tested, or collected for purchase.

(29) "Milk sherbet" is the pure, clean, frozen product made from milk product, water, and sugar, with harmless fruit or fruit juice flavoring and with or without harmless coloring, which must contain not less than 35/100 of 1% of acid, as determined by titrating with standard alkali and expressed as lactic acid, and with or without added stabilizer composed of wholesome edible material. It must contain not less than 4% by weight of solids.

(30) "Mislabeled", "unwholesome", "food additives", "optional ingredients", "impure", "misbranded", "contaminated", "adulterated", "perishable", "hazardous", "unfit", "spoiled", "damaged", and similar terms, when applied to a manufactured dairy product or product made in semblance or in imitation of a manufactured dairy product, are as defined in Title 50, chapter 31.

(31) "Official test" means test procedures outlined in





the sources referred to under 81-22-301 concerning samples, methods, and rules of evidence.

(32) "Pasteurization", "pasteurizing", and similar terms mean the process of heating every particle of milk or milk product to at least 145 degrees F and holding it continuously at or above this temperature for at least 30 minutes or to at least 161 degrees F and holding it continuously at or above this temperature for at least 15 seconds in equipment which that is properly operated and approved by the department. Milk products that have a higher fat content than milk or contain added sweeteners shall must be heated to at least 155 degrees F and held continuously at or above this temperature for at least 30 minutes, or to at least 175 degrees F and held continuously at or above this temperature for at least 25 seconds. This definition does not bar any other pasteurization process which that has been recognized by the United States public health service to be equally effective and which that is approved by the department.

(33) "Person" means an individual, firm, partnership, corporation, cooperative, or other business unit or trade device.

(34) "Producer" means the person who exercises control over the production of milk or cream delivered to a milk or cream receiving station or manufactured dairy products plant

or who receives payment for milk or cream used in manufacturing.

(35) "Raw milk" or "raw milk products" means milk or milk products ~~which~~ that have not been treated by a process of pasteurization.

(36) "Renovated butter" or "processed butter" is the product made by melting and reworking, without the addition or use of chemicals or substances except whole milk, cream, or salt, and must contain not less than 80% of milk fat.

(37) "Safe temperature" means 45 degrees F or less~~,~~ unless the product is frozen, in which case the temperature must be at or below 0 degrees F.

(38) "Skimmed milk cheese" is the sound, solid, and ripened product made from skim milk by coagulating the casein with rennet or lactic acid, with or without ripening ferments and seasoning.

(39) "Testing", "test", "tested", and similar words mean the examination of milk, cream, or manufactured dairy products by sight, odor, taste, or biological or chemical laboratory analysis to determine their quality, wholesomeness, or composition.

(40) "Water ice" means a frozen product containing but not limited to the following ingredients: water, sugar, flavoring, coloring, stabilizers, and other ingredients allowed by the Code of Federal Regulations as optional





ingredients."

**Section 80.** Section 82-3-205, MCA, is amended to read:

"**82-3-205. Penalty.** (1) ~~Every~~ Each person, firm, or corporation violating any of the provisions of this part ~~shall--be--deemed~~ is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $25 or more than $500 or by imprisonment in the county jail for not more than 90 days or by both ~~such~~ fine and imprisonment.

(2) Any person, firm, or corporation convicted of a second violation of any of the provisions of this part ~~shall~~ must be punished as ~~above~~ provided in subsection (1), ~~and the license of any retail coal dealer shall, thereby, be automatically revoked,~~ and it ~~shall be~~ is unlawful for ~~any~~ the person, firm, or corporation ~~so convicted~~ to engage ~~thereafter~~ in ~~said retail~~ business, either directly or indirectly, for a period of 6 months ~~next~~ after ~~such~~ the second conviction."

**Section 81.** Section 85-9-604, MCA, is amended to read:

"**85-9-604. Collection and investment of assessments.** (1) The treasurer of each county in which the district is located shall collect special assessments at the same time and in the same way as county taxes.

(2) If the district is located in more than one county, all assessments collected ~~shall~~ must be deposited with the treasurer of the county in which the assessments were

legislature.

NEW SECTION. **Section 85.** Repealer. Sections 2-15-3204, 2-15-3205, 2-89-207, 10-2-411, 10-2-413, 10-2-414, 10-2-415, and 30-6-112, MCA, are repealed.

NEW SECTION. **Section 86.** Effective date. [Section 31] is effective June 30, 1996.

-End-

# SENATE BILLS
# AND RESOLUTIONS

SB 1 INTRODUCED BY LYNCH

CODE COMMISSIONER BILL

BY REQUEST OF CODE COMMISSIONER

| | | | |
|---|---|---|---|
| 12/23 | INTRODUCED | | |
| 12/23 | REFERRED TO JUDICIARY | | |
| 1/04 | FIRST READING | | |
| 1/05 | HEARING | | |
| 1/05 | COMMITTEE REPORT—BILL PASSED | | |
| 1/06 | 2ND READING PASSED | 49 | 0 |
| 1/07 | 3RD READING PASSED | 50 | 0 |
| | TRANSMITTED TO HOUSE | | |
| 1/09 | FIRST READING | | |
| 1/09 | REFERRED TO JUDICIARY | | |
| 1/14 | HEARING | | |
| 1/19 | COMMITTEE REPORT—BILL CONCURRED | | |
| 1/20 | 2ND READING CONCURRED | 95 | 4 |
| 1/21 | 3RD READING CONCURRED | 92 | 3 |
| | RETURNED TO SENATE | | |
| 1/26 | SIGNED BY PRESIDENT | | |
| 1/27 | SIGNED BY SPEAKER | | |
| 1/28 | TRANSMITTED TO GOVERNOR | | |
| 1/29 | SIGNED BY GOVERNOR | | |
| | CHAPTER NUMBER 10 | | |
| | EFFECTIVE DATE: 10/01/93—SECTIONS 1-30 | | |
| | EFFECTIVE DATE: 06/30/96—SECTION 31 | | |

SB 2 INTRODUCED BY FRITZ

ESTABLISH MONTANA HISTORICAL SOCIETY ACQUISITIONS TRUST

BY REQUEST OF MONTANA HISTORICAL SOCIETY

| | | | |
|---|---|---|---|
| 12/23 | INTRODUCED | | |
| 12/23 | REFERRED TO STATE ADMINISTRATION | | |
| 1/04 | FIRST READING | | |
| 1/04 | FISCAL NOTE REQUESTED | | |
| 1/05 | HEARING | | |
| 1/05 | COMMITTEE REPORT—BILL PASSED | | |
| 1/06 | 2ND READING PASSED | 48 | 1 |
| 1/07 | 3RD READING PASSED | 46 | 4 |
| | TRANSMITTED TO HOUSE | | |
| 1/07 | FIRST READING | | |
| 1/08 | FISCAL NOTE RECEIVED | | |
| 1/09 | REFERRED TO STATE ADMINISTRATION | | |
| 1/09 | FISCAL NOTE PRINTED | | |
| 1/14 | HEARING | | |
| 1/15 | COMMITTEE REPORT—BILL CONCURRED | | |
| 1/19 | 2ND READING CONCURRED | 97 | 0 |
| 1/20 | 3RD READING CONCURRED | 97 | 0 |
| | RETURNED TO SENATE | | |
| 1/23 | SIGNED BY PRESIDENT | | |
| 1/26 | SIGNED BY SPEAKER | | |
| 1/27 | TRANSMITTED TO GOVERNOR | | |

# MINUTES

## MONTANA SENATE
## 53rd LEGISLATURE - REGULAR SESSION

## COMMITTEE ON JUDICIARY

**Call to Order:** By Sen. Bill Yellowtail, Chair, on January 5, 1993, at 10:08 a.m.

## ROLL CALL

**Members Present:**

Sen. Bill Yellowtail, Chair (D)
Sen. Sue Bartlett (D)
Sen. Chet Blaylock (D)
Sen. Bob Brown (R)
Sen. Bruce Crippen (R)
Sen. Eve Franklin (D)
Sen. Lorents Grosfield (R)
Sen. John Harp (R)
Sen. David Rye (R)
Sen. Tom Towe (D)

**Members Excused:** Sen. Halligan, Sen. Doherty

**Members Absent:** None

**Staff Present:** Valencia Lane, Legislative Council
Rebecca Court, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

| | |
|---|---|
| Hearing: | SB 1 |
| | SB 14 |
| | SB 42 |
| Executive Action: | SB 1 |
| | SB 42 |

## HEARING ON SB 1

**Opening Statement by Sponsor:**
Sen. Lynch, Senate District 35, opened on SB 1 and introduced Greg Petesch, Code Commissioner. Commissioner Petesch explained SB 1 is intended to correct minor inconsistencies and inaccuracies in the codes. Of the 85 sections in SB 1, 21 address federal name changes; 11 correct erroneous code references; 6 refer to courts of limited jurisdiction; 4 correct references to womens corrections centers; 4 regard centennial office revisions; 3 regard Department of Commerce; 3 refer to

transfer of fuel tax administration from Department of Revenue to Department of Transportation.

Mr. Petesch pointed out and explained several sections that appear to be substantive. Section 8 increases District Court Small Claims Courts jurisdiction from $2,500 to $3,000, to be consistent with Justice Court provisions. Section 10 revises the method of calculating the consumer price index. Consistent with a 1989 bill, Section 24 increases rate of capacity for motor vehicles fleet for light trucks from 3/4 to one ton; light vehicles are all vehicles under one ton. Section 60 deletes the residency requirement for practice of law in Montana, since the U.S. Supreme Court struck down the existing residency requirement. Section 63 deletes closure of certain criminal justice proceedings, in response to court rulings regarding the open meeting law. Section 84 deals with erroneous reference discovered at the time of codification.

**Proponents' Testimony:**
NONE

**Opponents' Testimony:**
NONE

**Questions From Committee Members and Responses:**
Senator Grosfield asked Commissioner Petesch, about section 84. Commission Petesch replied that as bills are being heard they are rendered erroneous by striking Section One of the bill as part of the amendment. For example, a Senator would offer an amendment on the Floor and the amendments coordinator would not notice that reference would be erroneous so we would change reference to pertinent section and report that in a report that's published with annotations code each year.

Senator Towe asked Commissioner Petesch whether the references are to "lower tribunal" instead of "inferior tribunal" and whether that is mandated in the statute." Commissioner Petesch replied that the Commission on Court of Limited Jurisdiction requested that the change be made throughout law in reference to the court. It is used in the Constitution, but throughout most of the Code they are referred to as Courts of Limited Jurisdiction or Lower Courts and that the change is made in four sections at their request.

**Closing by Sponsor:**
Senator Lynch closed on SB 1.

**HEARING ON SB 14**

**Opening Statement by Sponsor:**
Senator Harp, District 4, stated SB 42 would clarify service provisions for personal injury and property actions against the state.

The state has 40 days after service of summons and complaint to file an answer as it already provided in the Civil Procedures Act. The purpose of this act is to state within the service statutes that the rules provide 40 days to answer the complaint.

Often the plaintiffs believe that the 20 day rule required for private enterprise applies to the state. This bill will eliminate confusion.

**Proponents' Testimony:**
Bill Gianoulias, Chief Defense Council, Risk Management, expressed support for SB 42, and indicated his willingness to answer questions.

**Opponents' Testimony:**
NONE

**Questions From Committee Members and Responses:**
Senator Towe asked Bill Gianoulias if anything else is involved and if there are any other actions elsewhere. Mr. Gianoulias stated that it will not change. There will always be the 40 days to reply.

**Closing by Sponsor:**
Senator Harp closed on SB 42.

## EXECUTIVE ACTION ON SB 1

**Motion/Vote:** Senator Blaylock moved that SB 1 be recommended DO PASS. Motion CARRIED UNANIMOUSLY.

## EXECUTIVE ACTION ON SB 42

**Motion/Vote:** Senator Brown moved SB 42 DO PASS. Motion CARRIED UNANIMOUSLY.

# ROLL CALL

SENATE COMMITTEE Judiciary DATE 1-5-93

| NAME | PRESENT | ABSENT | EXCUSED |
|---|---|---|---|
| Senator Yellowtail | X | | |
| Senator Doherty | | | X |
| Senator Brown | X | | |
| Senator Crippen | X | | |
| Senator Grosfield | X | | |
| Senator Halligan | | | |
| Senator Harp | X | | |
| Senator Towe | X | | |
| Senator Bartlett | X | | |
| Senator Blaylock | X | | |
| ~~Senator Blaylock~~ | | | |
| Senator Rye | X | | |
| Franklin | X | | |
| Kane | X | | |
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F08

Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT


January 5, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 1 (first reading copy -- white), respectfully report that Senate Bill No. 1 do pass.

Signed: Wm Yellowtail
William "Bill" Yellowtail, Chair

M- Amd. Coord.
Sec. of Senate

21142SC.Sma

Proponents' Testimony:

**Mike Ruppert, Lewis and Clark County DUI Task Force,** stated the more people are aware of the task force the more people will get involved. The drivers license reinstatement fee is $100; the $100 is split in half to fund different agencies. The first $50 would fund the DUI Task Force, and the second $50 would be distributed among the cities and counties to fund organizations such as D.A.R.E., teen institutes, and sheriffs' departments.

**REP. BILL STRIZICH, HD 41, Great Falls,** said he has experience with the DUI Task Force, and one of his frustrations in his community is how the DUI Task Force is managed and how it interfaces with the community. He said that DUI Task Forces are sometimes overlooked and have been cut across the state.

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:

**REP. RANDY VOGEL** asked **REP. DAVE BROWN** how much advertising is going to cost. **REP. BROWN** replied it shouldn't cost anything because it is a public service announcement. A local governing body will publish the distribution of these funds.

**REP. BOB CLARK** asked **REP. BROWN** why this isn't covered under our current open meeting laws? **REP. BROWN** said it should be, but the meetings often aren't publicly announced.

**REP. DUANE GRIMES** asked **REP. BROWN** if this is going to be a standard announcement, and is it required to be legal format. **REP. BROWN** said it could be a regular public service announcement.

**REP. VOGEL** asked **REP. BROWN** if there will be a penalty if they don't comply. **REP. BROWN** said there is not a penalty in this bill.

Closing by Sponsor:

**REP. BROWN** requested that the committee hold HB 128 for 24 hours for **Mr. Ruppert** and **Mr. MacMaster** to develop necessary amendments.

## HEARING ON SB 1

Opening Statement by Sponsor:

**SEN. J.D. LYNCH, Senate District 35, Butte,** stated SB 1 includes revisions and updates as a result of the previous legislative session per the Code Commissioner.

Proponents' Testimony:

**Greg Petesch, Code Commissioner, Legislative Council,** explained the methodology for putting this bill together. As people call the commissioner's office for questions during the interim, the commissioner's staff makes notations on those calls. They then draft the proposed pieces of legislation that are required by law to be submitted to the council by November 1. After developing the bill, **Mr. Petesch** sends copies of the proposed sections to each agency that is impacted. This bill has 85 sections, and the changes are clarified on the green sheets attached to the bill.

Opponents' Testimony: None.

Questions From Committee Members and Responses:

**REP. TIM WHALEN** said he understands it is the practice of the Code Commissioner to change individual codes to reconcile conflicts between court decisions and the codes or statutory provisions of the law. He asked if any of those substantive changes are included in the code commission bill, and if the Code Commissioner is still following the practice of introducing individual bills? **Mr. Petesch** said there are six bills of substantive changes. The Senate Judiciary Committee has authorized the drafting of those bills at the Code Commissioner's request because of the fewer number of Senate bills.

**REP. HOWARD TOOLE** and **REP. JIM RICE** asked **Mr. Petesch** to explain the court decision in Section 63 and why it has been included. **Mr. Petesch** said it is the provision for a major criminal procedure revision note from the 1991 Legislative Session that provided that certain preliminary exams be closed for comments. The state neglected to offer a defense on that provision, and the state was convinced it was illegal.

**REP. TOOLE** asked **Mr. Petesch** if this bill requires affidavits in support of the file to be closed to the press until a later time in the criminal prosecution proceedings. **Mr. Petesch** stated the criminal procedure code contained a provision that was introduced by **REP. BRUCE MEASURE, Kalispell,** during the 1991 Legislature and adopted by the committee, that required affidavits to be prepared in support to file criminal charges. Felony charges would be kept sealed until the trial, and there would have to be other means and avenues for the press to have access to that information.

**REP. GRIMES** asked to be reassured that because it's a state court decision, that our codes aren't automatically changed. **Mr. Petesch** said there are a number of statutes in the code that have been found unconstitutional and are invalid by court action. Normally, those are the subject of specific legislation.

Closing by Sponsor: None.

HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL DATE 1-14-93

| NAME | PRESENT | ABSENT | EXCUSED |
|---|---|---|---|
| Rep. Russ Fagg, Chairman | ✓ | | |
| Rep. Randy Vogel, Vice-Chair | ✓ | | |
| Rep. Dave Brown, Vice-Chair | ✓ | | |
| Rep. Jodi Bird | ✓ | | |
| Rep. Ellen Bergman | ✓ | | |
| Rep. Vivian Brooke | ✓ | | |
| Rep. Bob Clark | ✓ | | |
| Rep. Duane Grimes | ✓ | | |
| Rep. Scott McCulloch | ✓ | | |
| Rep. Jim Rice | ✓ | | |
| Rep. Angela Russell | ✓ | | |
| Rep. Tim Sayles | ✓ | | |
| Rep. Liz Smith | ✓ | | |
| Rep. Bill Tash | ✓ | | |
| Rep. Howard Toole | ✓ | | |
| Rep. Tim Whalen | ✓ | | |
| Rep. Karyl Winslow | ✓ | | |
| Rep. Diana Wyatt | ✓ | | |
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powder and lead. It isn't clear to **Mr. Graham** either, after reading the bill, if the bill means the firearm is loaded or unloaded.

Motion/Vote: **REP. VOGEL** moved the Department language as a substitute amendment to SB 14. Motion carried with **REPS. WHALEN** and **BROWN** voting no.

Discussion (on original motion):

**REP. DIANA WYATT** said line 21 reads: "authorized by parent or guardian" and asked **CHAIRMAN FAGG** to clarify authorized. She asked whether that would mean written or oral, or simply an understanding that they were going hunting together.

**REP. VIVIAN BROOKE** spoke in opposition to the bill. She compared driving a vehicle with carrying firearms, whether they're loaded or unloaded. Children age 14 and under have a much less general understanding of danger and harm. There's too much inattentiveness in this age group, even while carrying the weapon with an adult.

**REP. BROWN** commented that a minor has to be 12 years old to have a hunting license and have taken a firearms safety course, and this bill doesn't apply to **REP. BROOKE'S** comments.

Vote: **SB 14 BE CONCURRED IN.** Motion carried with **REPS. WINSLOW, TOOLE, WYATT, BROOKE,** and **RUSSELL** voting no.

**REP. SAYLES** will carry SB 14 on the House floor.

## EXECUTIVE ACTION ON SB 1

Motion/Vote: **REP. RICE MOVED THAT SB 1 BE CONCURRED IN.** Motion carried unanimously. **REP. RICE** will carry SB 1 on the House floor.

## EXECUTIVE ACTION ON HB 90

Motion/Vote: **REP. CLARK MOVED TO TAKE HB 90 OFF THE TABLE.** Motion failed on a 9-9 tie vote with **REPS. BROWN, TOOLE, BROOKE, WINSLOW, MCCULLOCH, RUSSELL, BIRD, WYATT** and **RICE** voting no.

HOUSE STANDING COMMITTEE REPORT

January 15, 1993



Mr. Speaker: We, the committee on Judiciary report that Senate Bill 1 (third reading copy -- blue) do pass .

Signed: _____

Russ Fagg, Chair